

Land to the South of Ringwood Road, Alderholt

Ecology Proof of Evidence of Dr R Brookbank

Prepared on behalf of

Dudsbury Homes (Southern) Ltd

PINS Reference: APP/D1265/W/23/3336518

LPA Reference: P/OUT/2023/01166

Final Report

28 May 2024

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1. SUMMARY

- 1.1 This Appeal was submitted in response to the refusal by Dorset Council (DC) of the outline planning application (ref: P/OUT/2023/01166) for a mixed-use development of up to 1,700 dwellings, employment space, village centre, Suitable Alternative Natural Greenspace (SANG) and associated infrastructure, at Land to the South of Ringwood Road, Alderholt, Dorset (hereafter referred to as 'the Site').
- 1.2 This Proof of Evidence concerns matters relating to ecology and nature conservation raised by DC and has been prepared by Dr Rebecca Brookbank, Technical Director at Ecological Planning & Research Ltd. (EPR), on behalf of Dudson Homes (Southern) Ltd ('the Appellant').
- 1.3 The purpose of my evidence is to explain, for the benefit of the Inquiry, why in my professional opinion there are no valid ecological or nature conservation grounds for refusing planning permission, and by extension this Appeal.
- 1.4 In my Proof of Evidence, I have set out the planning and ecological background of relevance to the assessment of the Appeal Proposal. Comprehensive survey and assessment work has been carried out by the Appellant's appointed consultants, which since 2022 has been led by my company, EPR.
- 1.5 An extensive suite of mitigation measures is proposed, to be secured by planning condition or obligation, such that no significant negative residual effects are predicted to remain following their implementation. Due to the scale of habitat enhancement and creation proposed within the areas of Suitable Alternative Natural Greenspace (SANG) and connecting green infrastructure corridors, as well as features incorporated within the built realm, the Appeal Proposal will deliver net gains in biodiversity, with significant positive residual effects predicted for foraging bats, birds (including breeding birds, Barn Owl and Nightjar), amphibians (including GCN), reptiles and invertebrates. As a result, DC's Reasons for Refusal (RfR) do not concern onsite ecology or BNG.
- 1.6 DC's RfR 1 asserts adverse effects on the integrity of the Dorset Heath(land)s, River Avon and New Forest International Sites afforded protection under The Conservation of Habitats and Species Regulations 2017 (as amended)(the 'Habitats Regulations'), owing to the need to demonstrate that appropriate mitigation can and will be provided.
- 1.7 The Appellant has worked closely with Natural England, the statutory adviser for nature conservation, to refine the mitigation strategy and to develop the package of environmental information necessary to reach a positive HRA conclusion. Further information has been provided to narrow the issues underpinning RfR 1, as set out within Addendum Information for HRA. What now remains is for the means of securing the comprehensive package of mitigation measures to be detailed through the wording of relevant planning conditions and/or planning obligations.

- 1.8 In my view, on the basis of these measures being adequately secured, there is sufficient certainty that the Appeal Proposal would not result in an adverse effect on the integrity of the Dorset Heath(land)s, River Avon and New Forest International Sites, either alone or in combination with other plans and projects.
- 1.9 In conclusion, my professional opinion is that, subject to the securement of the overall proposal, there are no valid ecology and nature conservation grounds for this Appeal to be dismissed and the Appeal Proposal can be delivered in full compliance with the Conservation of Habitats and Species Regulations 2017 (as amended), as well as other nature conservation legislation and planning policy.

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1. INTRODUCTION

Scope of Evidence

- 1.1 This Proof of Evidence has been prepared to inform a planning appeal made by the Appellant under Section 78 of the Town and Country Planning Act 1990 and in accordance with the Town and Country Planning (Inquiries Procedure) (England) Rules 2000/1624.
- 1.2 This Appeal was submitted in response to the refusal by Dorset Council (DC) of the outline planning application (ref: P/OUT/2023/01166) for a mixed-use development of up to 1,700 dwellings, employment space, village centre, Suitable Alternative Natural Greenspace (SANG) and associated infrastructure, at Land to the South of Ringwood Road, Alderholt, Dorset (hereafter referred to as 'the Site').
- 1.3 The full description of the proposed development is as follows:

“Mixed use development of up to 1,700 dwellings including affordable housing and care provision; 10,000sqm of employment space in the form of a business park; village centre with associated retail, commercial, community and health facilities; open space including the provision of suitable alternative natural green space (SANG); biodiversity enhancements; solar array, and new roads, access arrangements and associated infrastructure (Outline Application with all matters reserved apart from access off Hillbury Road).”

- 1.4 This Proof of Evidence concerns matters relating to ecology and nature conservation raised by DC and has been prepared by Dr Rebecca Brookbank, Technical Director at Ecological Planning & Research Ltd. (EPR), on behalf of Dudson Homes (Southern) Ltd ('the Appellant').

Qualifications and Experience

- 1.5 I am Dr Rebecca Brookbank, Technical Director at Ecological Planning & Research Ltd (EPR), Consulting Ecologists based in Winchester. I hold the degree of Bachelor of Science with Honours in Biology, and a Doctorate in Plant Community Ecology, at the University of Southampton. I am also a Full Member of the Chartered Institute of Ecology and Environmental Management (CIEEM).
- 1.6 I have worked in ecological consultancy since 2007. During my career to date, I have carried out Ecological Appraisals and Ecological Impact Assessments (EclIA), completing a variety of protected species surveys (amphibians, reptiles, bats, dormice, badger, holding Class Survey Licences for Great Crested Newt and Dormice) and designing mitigation strategies. Most recently, I have closely followed the evolution of Biodiversity Net Gain (BNG) assessment, having been involved in Natural England's early stakeholder consultation workshops during the development of the Defra biodiversity metric.

- 1.7 My principal area of expertise is collating bespoke information for project-level Habitats Regulations Assessment (HRA). I have assessed potential effects, chiefly from recreational pressure and air pollution, arising from large residential development proposals on the Wealden Heaths (Phase II) Special Protection Area (SPA) (and component Woolmer Forest Special Area of Conservation (SAC)), the Thames Basin Heaths (TBH) SPA, the Dorset Heath(land)s SAC/SPA/Ramsar, Epping Forest SAC and the Chilterns Beechwoods SAC. I have developed bespoke Impact Avoidance and Mitigation Strategies (IAMS) in close consultation with Natural England, including the design of bespoke Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) to address recreational pressure effects, as well as air quality mitigation and monitoring.
- 1.8 I have also carried out strategic HRA work and have contributed towards the evolution of Industry knowledge and guidance on SANG design and Air Quality Assessment. This has included the design of an outline access management strategy for parts of the Wealden Heaths SPA (including Woolmer Forest SAC) on behalf of East Hampshire District Council in 2012; statistical analysis of vegetation data to inform EPR's New Forest Air Quality Ecological Mitigation Plan in 2018; visitor monitoring of the TBH SPA on behalf of Natural England also in 2018; and in 2020 I reviewed the approach to SANG delivery in the context of the TBH SPA on behalf of Hart, Rushmoor and Surrey Heaths Councils, the results of which helped to inform Natural England's 2021 update of their SANG Quality Guidelines. In 2020 I also acted as a contributing author to CIEEM's advisory document 'Ecological Assessment of Air Quality Impacts', which was later published in January 2021.
- 1.9 I have acted as Expert Witness on Ecology and HRA matters in a number of Appeal Inquiries and in relation to a number of different International sites, including:
- 2014 - the successful Magna Business Park Appeal in Poole (APP/Q1255/A/13/2204098) concerning recreational pressure on the Dorset Heath(land)s SAC, SPA and Ramsar site;
 - 2017 - the Wisley Airfield Appeal in Guildford Borough (APP/Y3615/W/16/3159894), concerning recreational pressure and air pollution on the TBH SPA. Although this Appeal was dismissed on non-ecological grounds, the Inspector agreed that that the scheme would not result in likely significant effects on the SPA. The Wisley Airfield site was subsequently allocated in the Guildford Borough Local Plan: Strategy and Sites (2015-2034) following Local Plan Examination and subsequent High Court challenge ([2019] EWHC 3242 (Admin)) which drew upon the evidence collated in relation to the Wisley Airfield Appeal proposals;
 - 2021 - the successful Epping Forest College Appeal in Epping Forest (APP/J1535/W/20/3258787) concerning air quality effects on Epping Forest SAC;
 - 2023 – the successful Brocks Pine Surf Lagoon Appeal in Dorset (APP/D1265/W/23/3325232), concerning recreational pressure, loss of offsite supporting habitat, BNG and Environmental Net Gain on the Dorset Heath(land)s SAC and SPA; and
 - 2023 – the second Wisley Airfield Appeal in Guildford Borough (APP/Y3615/W/23/3320175), concerning recreational pressure and air pollution on the TBH SPA, in addition to wide ranging EclA (challenges regarding protected species survey and mitigation) and BNG matters. The appeal was allowed on 24 May 2024.

- 1.10 With regards to my involvement with the Alderholt Meadows proposal, EPR was appointed by the Appellant in 2022 to produce the ES ecology chapter and supporting technical appendices (TAs) pursuant to the outline planning application, and to liaise with relevant stakeholders (in particular Natural England) to agree the mitigation strategy.
- 1.11 I led EPR's input from the outset, which culminated in the production of the submitted EclA (presented in ES Chapter 9), Information for HRA, Ecological Mitigation and Enhancement Strategy, SANG Management Plan and BNG report. I have liaised with Natural England and Dorset Council regarding the detail of objections raised to the planning application and subsequent appeal, and have facilitated changes to the proposal and produced addendum assessment information with a view to addressing concerns and overcoming the ecology-related reason for refusal (RfR 1).

Structure of My Evidence

- 1.12 The purpose of my evidence is to explain, for the benefit of the Inquiry, why in my professional opinion there are no valid ecological or nature conservation grounds for refusing planning permission, and by extension this Appeal.
- 1.13 I will refer to evidence contained within the listed Core Documents (CD), including reports and documents submitted to DC pursuant to the planning application, with CD references provided in **bold text**. CDs that have not, at the time of writing, been assigned a reference number are labelled as '**CD.X**'.
- 1.14 The structure of my evidence is as follows:
- In **Section 2**, I set out the planning and ecological background of relevance to the Appeal Proposal. I explain:
 - the nature conservation legislation and planning policies that have informed the design and assessment of the Appeal Proposal;
 - the survey work that has been carried out to inform ecological assessment;
 - the important ecological features that have been identified on site through survey work, which have been subject to robust assessment; and
 - the comprehensive mitigation and BNG strategy proposed to ensure compliance with relevant policy and legislation and a positive nature conservation legacy for the scheme.
 - In **Section 3**, I respond to the Council's RfR 1, giving an overview of the consultation responses and DC Appropriate Assessment that have informed the RfR, and I explain the ways in which the issues can be readily overcome by securing impact avoidance and mitigation measures via planning condition or obligation. Here, I make reference to the draft topic-specific Ecology Statement of Common Ground (SoCG) and the position reached with Natural England and DC at the time of writing.
 - Finally, in **Section 4**, I provide a summary of matters of key relevance to the determination of this Appeal; why there can be certainty beyond reasonable scientific doubt as to the absence of adverse effects on International Sites, and the likelihood that significant onsite biodiversity gains would be delivered, and therefore set out my view,

which is that there are no ecology and nature conservation related reasons why the Appeal Proposal cannot be consented.

Declaration

- 1.15 The evidence that I have prepared and provide for this Appeal (PINS reference APP/D1265/W/23/3336518) in this Proof of Evidence is true and has been prepared and is given in accordance with the guidance of my professional institution, the Chartered Institute of Ecology and Environmental Management. I confirm that the opinions expressed are my true and professional opinions.

2. PLANNING & ECOLOGY BACKGROUND

Legislation & Policy Context

- 2.1 Details of the nature conservation legislation, planning policies and guidance of relevance to the Appeal Proposal are set out at Annex 1 of ES Technical Appendix (TA) 9.1 (**CDA.29**). A summary of the key documents is provided below:

Nature Conservation Legislation

- The Biodiversity Net Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024 (**CD.X**);
- Environment Act 2021 (**CDE.17**);
- The Conservation of Habitats and Species Regulations 2017 (as amended)(the ‘Habitats Regulations’)(**CDE.5**);
- Wildlife & Countryside Act 1981 (as amended)(**CDE.8**);
- The Countryside and Rights of Way (CROW) Act 2000;
- The Natural Environment and Rural Communities (NERC) Act 2006 (**CDE.10**); and
- The Protection of Badgers Act 1992 (**CDE.9**);

Planning Policy

- National Planning Policy Framework (2023)(**CDE.1**);
- Christchurch and East Dorset Local Plan 2014-2028 (adopted April, 2014)(**CDD.1**):
 - Policy ME1 Safeguarding Biodiversity and Geodiversity;
 - Policy ME2 Protection of the Dorset Heathlands;
- The Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document (**CDD.4**);
- The Dorset Heathlands Interim Air Quality Strategy 2020-2025 (**CDF.24**); and
- The Former Emerging Dorset Council Local Plan, now discontinued (Consultation version January 2021 (Regulation 18 consultation), **CDD.16**):
 - Policy ENV1: Green infrastructure: strategic approach;
 - Policy ENV2: Habitats and species;
 - Policy ENV3: Biodiversity and net gain;

Guidance

- Government Circular 06/05: Biodiversity and Geological Conservation (2005);
- Planning Practice Guidance (last updated February 2024)(**CDE.2**);
- British Standard BS42020:2013 Biodiversity – Code of practice for planning and development (2013);

- Chartered Institute of Ecology and Environmental Management (CIEEM) Guidelines for Ecological Impact Assessment in the United Kingdom and Ireland: Terrestrial, Freshwater, Coastal and Marine version 1.2 (2018);
- Biodiversity 2020: A Strategy for England's Wildlife and Ecosystem Services;
- The 25 Year Environment Plan;
- Dorset Biodiversity Appraisal Protocol (2024);
- Dorset Biodiversity Strategy (2003);
- Natural England's (NEs) Habitat Networks (England) maps, viewed via the Multi-agency Government Information for the Countryside (MAGIC) map and downloaded via NEs Open Data Geoportal; and
- Dorset Ecological Network maps viewed via the interactive Dorset Explorer map (Dorset Local Nature Partnership, 2020).

Site Description & Physical Environment

- 2.2 The Appeal Site extends to approximately 122ha, where the majority of the Site is in agricultural use, split across three farm holdings. There are large fields of arable land used for the production of cereal crops, and improved grassland used for cattle and horse grazing and hay/silage production. These fields are surrounded by a network of hedgerows, interspersed with ditches and several ponds towards the southern Site extent. Mature coniferous plantation woodland is located in the north west corner of the Site, at Cross Roads Plantation, which is bisected by a Public Right of Way that connects Alderholt with Cranborne Common – a SSSI and part of the Dorset Heath(land)s SAC/SPA/Ramsar.
- 2.3 The solid geology underlying the Site comprises sand and clay, overlaid by superficial deposits ranging from silt to river terrace gravels. Soils range from sandy to loamy, with variable acidity, and with areas of clayey soils where drainage would be comparatively impeded. The Site is gently undulating, with the highest point (AOD) in the north. The Site drains to the west into Sleep Brook, which eventually drains into the River Avon that flows north to south, to the east of the Site. Reference to the OS One Inch map from 1885-1900 shows how part of the western side of the Site was formerly known as Alderholt Common, which is shown as being contiguous with Cranborne Common further to the west. To the far east of the Site lies the New Forest National Park and its multiple International nature conservation designations.

Ecological Survey & Assessment Work

Survey Work

- 2.4 The desktop study work and baseline ecology surveys completed in relation to the Appeal Proposal are described within ES TA 9.1 and the 2024 Addendum ES TA 9.1Ad (CDA.X), and are summarised for ease of reference in **Table 2.1** below.

Ecological Impact Assessment (EclA)

- 2.5 The Appeal Proposal has been subject to robust EclA, as detailed in ES Chapter 9.

- 2.6 The EclA of the Appeal Proposal was carried out in accordance with the Chartered Institute of Ecology and Environmental Management’s EclA Guidelines (2018). Further details of the EclA Methodology are set out in Section 2 of the submitted ES TA 9.1 (**CDA.29**). The EclA drew on the survey reports prepared by LCES in 2019 (ES TA 9.1 Annex 2, **CDA.26**) and the ABR Ecology report in 2022 (ES TA 9.1 Annex 3, **CDA.27**), the latter of which drew on a separate bird survey report produced by Pro Vision in 2022 (ES TA 9.1 Annex 4, **CDA.28**).
- 2.7 The survey work carried out at the Site, as described above, enabled important ecological features (IEFs) present within the zone of influence (ZOI) of the Appeal Proposal to be characterised, and a thorough assessment to be made of potentially significant ecological effects resulting from biophysical changes during site clearance, construction and operation.

Table 2.1: Summary of baseline data collection 2019-2024

Data Collection	Consultant Lead, Date
Phase 1 habitat survey	LCES, 2019 ABR Ecology, 2022
UK Habitat Classification Survey	EPR, 2024
Bats – Phase 1 (buildings/trees/habitat)	LCES, 2019 ABR Ecology, 2022 EPR, 2024
Bats – Emergence survey, activity transects and statics	LCES, 2019 ABR Ecology, 2022 EPR, 2024 (emergence on B10/11 only)
Badgers	LCES, 2019 ABR Ecology, 2021 EPR, 2024
Hazel Dormouse	LCES, 2019 ABR Ecology, 2021
Birds - Breeding	LCES, 2019 Pro Vision (on behalf of ABR Ecology), 2021
Birds – Barn Owl	ABR Ecology, 2021 EPR, 2024
Birds - Nightjar	LCES, 2019 Pro Vision (on behalf of ABR Ecology), 2021
Reptiles	LCES, 2019 ABR Ecology, 2021
Amphibians (including Great Crested Newts)	LCES, 2019 ABR Ecology, 2022
Invertebrates	ABR Ecology, 2022 EPR, 2023

2.8 Important habitats on Site include ponds, rush pasture, broadleaved woodland and hedgerows. These habitats support a good range of wildlife, including assemblages of bats, common woodland birds, Barn Owl, Nightjar, Great Crested Newt towards the southern parts of the Site as well as other common amphibians, populations of common reptile and Badger.

2.9 As set out at Table 9.8 of ES Chapter 9, the following IEFs were identified:

- Dorset Heath(land)s SAC/SPA/Ramsar - International importance;
- River Avon SAC/Avon Valley SPA/Ramsar - International importance;
- The New Forest SAC/SPA/Ramsar - International importance;
- Cranborne Common SSSI - National importance;
- Other SSSIs which are in ZOI - National importance;
- Sleepbrook Farm SNCI - County importance;
- Ringwood Forest and Home Wood SINC - County importance;
- Other LWSs which are in ZOI - County importance;
- Woodland - Local importance;
- Hedgerows / Treelines - Local importance;
- Grassland - Local importance;
- Ponds - Local importance;
- Bats including GHS/Barbastelle - County importance;
- Badgers - Within ZOI importance;
- Birds – Breeding - Local importance;
- Birds – Barn Owl - Local importance;
- Birds - Nightjar - Local importance;
- Amphibians (including Great Crested Newts) - Local importance;
- Reptiles - Local importance; and
- Invertebrates - Within ZOI / Local importance.

2.10 Potential effects on the designated sites of International importance located in the ZOI were considered separately in ES TA 9.2 (**CDA.30**) 'Information for Habitats Regulations Assessment' (a 'shadow' HRA, abbreviated to 'IfHRA'), which I turn to further below.

2.11 The EclA identified the potential for significant negative effects on IEFs in the absence of mitigation, therefore, in accordance with the mitigation hierarchy, opportunities to secure impact avoidance were explored first. Where impacts could not be avoided, mitigation measures were then applied, and where residual effects remained, compensation was then proposed as a last resort.

2.12 The various components of the mitigation strategy proposed to ensure that the Appeal scheme can be delivered in compliance with the relevant legislation and policy described above, all of

which can be secured by planning condition or obligation, have been or will be detailed within the following documents:

- Ecological Mitigation and Management Plan (ES TA 9.3, **CDA.31**)
- SANG Creation and Management Plan (ES TA 9.4, **CDA.32**);
- Construction Environmental Management Plan;
- Lighting Strategy (pursuant to the submitted Lighting Impact Assessment, **CDA.66**);
- Drainage Strategy (ES TA 11.1Ad, **CDA.100**); and
- Landscape Ecology and Management Strategy.

2.13 In summary, the mitigation strategy for the Appeal Proposal is comprised of the following impact avoidance, mitigation and compensation measures (the mitigation strategy relating to the protection of International Sites considered as part of the HRA of the Appeal proposals is covered separately below):

Construction Phase

- Implementation of Tree Protection Plan, to include root protection measures;
- Implementation of CEMP, to be informed by up-to-date baseline data and incorporating:
 - Dust control measures;
 - Pollution prevention measures;
 - Protective fencing of retained habitats;
 - Precautionary site clearance methods - to include European Protected Species Mitigation Licence in relation to the demolition of bat roosts and clearance of GCN habitat (the latter could be achieved under District Licence), Natural England Licence in relation to loss of Barn Owl roosts and Badger setts, supervised vegetation clearance/destructive search for reptiles and nesting birds, and update surveys prior to construction;
 - Construction phase lighting strategy; and
- Provision of compensatory bat roost features.

Operational Phase

- Conservation-led management of enhanced and newly created habitats in the SANGs and blue and green infrastructure; and
- Implementation of Lighting Strategy.

2.14 Overall, the EclA set out within ES Chapter 9 concluded that with mitigation, no residual significant negative effects will remain. The 2024 update surveys reported in the Addendum Ecology Baseline report (ES TA 9.1Ad **CD.X**) have confirmed that the submitted EclA remains valid.

2.15 Owing to the extent of enhanced and newly created semi-natural habitats to be delivered within the areas of proposed SANG and connecting green infrastructure corridors, significant gains in

biodiversity are predicted, as measured using the Defra metric (v3.1). ES TA 9.5 (**CDA.34**) provided a report of the metric calculation completed, including metric parameters, assumptions and results, with the completed metric itself provided at Annex 1 (**CDA.33**).

- 2.16 The BNG baseline has been reviewed as part of the 2024 update survey work carried out, as reported in ES TA 9.1Ad (**CD.X**), with a revised metric calculation completed. This is reported in an Addendum ES TA 9.5Ad (**CD.X**), which concludes that the following net gains can be achieved based on the details known for the outline scheme:
- Habitats – 11.95%
 - Hedgerows – 26.37%
 - Ditches – 69.80%
- 2.17 In addition to the measurable gains, additional features will be incorporated into the built realm to provide additional species enhancements, including wildlife bricks, boxes and measures to aid wildlife dispersal.
- 2.18 On the basis of the mitigation and enhancement strategy presented in the EMES (ES TA 9.3, **CDA.31**) the EclA also predicts significant positive effects for foraging bats, birds (including breeding birds, Barn Owl and Nightjar), amphibians (including GCN), reptiles and invertebrates.
- 2.19 The Appeal Proposal can therefore be delivered in compliance with relevant nature conservation legislation and will make positive contributions towards local biodiversity policy.

Information for HRA

- 2.20 The Site is located to the east of Cranborne Common Site of Special Scientific Interest (SSSI) which forms part of the Dorset Heath(land)s SAC/SPA/Ramsar site. Further to the east beyond the A338 is the River Avon and its floodplain, which benefit from SSSI designations and the International River Avon SAC and Avon Valley SPA and Ramsar designations. Further east still lies the New Forest SSSI/SAC/SPA/Ramsar designations and National Park. The Appeal Site location and surrounding International Sites are shown on Map 1 of the IfHRA report (ES TA 9.2, **CDA.30**).
- 2.21 SACs and SPAs are protected under the Conservation of Habitats and Species Regulations 2017 (as amended) (the ‘Habitats Regulations’)(**CDE.5**), with Ramsar sites afforded the same protection as a matter of national planning policy under the NPPF (**CDE.1**). The Habitats Regulations require the ‘Competent Authority’ (formerly DC, but now PINS) to undertake a HRA in relation to any plans or projects which may have a likely significant effect either alone or in combination with other plans and projects. The submitted IfHRA report therefore provides a package of information to assist the Competent Authority in discharging their duties under the Habitats Regulations.
- 2.22 In addition to the legislative requirements set out within the Habitats Regulations (Regulation 63 *et seq*), the approach taken in the shadow HRA drew on relevant planning policy, HRA guidance and case law, as summarised at Appendix 1 of the IfHRA report. Accordingly, the assessment considered the potential of the Appeal Proposals to undermine the European Site Conservation Objectives, and specific conservation targets set out within Natural England’s European Site

Conservation Objectives: Supplementary advice on conserving and restoring site features (hereafter referred to as 'COA')(CD.X).

- 2.23 The IfHRA report considered the potential for likely significant effects to arise as a result of the Appeal Proposal, either alone or in combination with other plans and projects, on:
- The Dorset Heath(land)s qualifying habitats and species due to increased recreational pressure, loss or degradation of offsite supporting habitat for Nightjar and air pollution;
 - The River Avon qualifying habitats and species due to nutrient (Phosphate) pollution; and
 - The New Forest qualifying habitats and species due to increased recreational pressure and air pollution.
- 2.24 The qualifying features of the aforementioned International Sites are described in Section 3 of the IfHRA report, with potential impact pathways requiring consideration through HRA set out in Section 4.
- 2.25 A package of impact avoidance and mitigation measures is proposed where likely significant effects are predicted. This 'Impact Avoidance and Mitigation Strategy' (IAMS) includes:
- Development located beyond the 400m Dorset Heath(land)s exclusion zone;
 - 53ha of bespoke SANGs;
 - Financial contribution to the Dorset Heathlands SAMM strategy;
 - Financial contribution to the Dorset Heathlands Interim Air Quality Strategy;
 - Provision of new and enhanced habitats for Nightjar within the SANGs and green infrastructure network;
 - Sensitive lighting strategy;
 - Construction Environmental Management Plan (CEMP);
 - Drainage (SuDS) Strategy;
 - Purchase of Phosphate credits to secure nutrient neutrality; and
 - Financial contribution to the emerging New Forest SAMM strategy.
- 2.26 With respect to the Dorset Heathlands, the approach to impact avoidance and mitigation strategy design followed the requirements set out within the Dorset Heathlands Planning Framework SPD (CDD.4), in particular Appendix D: '*Guidelines for the establishment of Suitable Alternative Natural Greenspace (SANG) Quality Standards for the Dorset Heaths*'.
- 2.27 In accordance with the 'People over Wind' judgment (Case C-323/17 in the European Court of Justice), mitigation falls to be considered through Appropriate Assessment. However, on the basis that the above measures are acceptable, that they would be delivered in advance of first occupation, and would be maintained thereafter in perpetuity, no adverse effects on site integrity would arise, when considered in relation to the development alone and in combination with other plans and projects. The Appeal Proposal can therefore be delivered in accordance with the requirements of the Habitats Regulations and Policy 188 of the NPPF.

3. RESPONSE TO DC'S REASON FOR REFUSAL 1

Background & Scope

3.1 Reason (1) set out in DC's decision notice of 7 July 2023 (**CDA.76**) states:

"1. The proposal would have adverse impacts on the Dorset Heathlands Special Protection Area (SPA), Dorset Heaths Special Area of Conservation (SAC), New Forest SPA/SAC and River Avon SAC and it has not been demonstrated that appropriate mitigation can or will be provided, contrary to Policy ME2 of the adopted Christchurch and East Dorset Local Plan – part 1 2014, the Dorset Heathlands Planning Framework 2020-2025 SPD, and paragraphs 180-182 of the National Planning Policy Framework (NPPF). This forms a clear reason for refusal of the proposal in accordance with NPPF para 11 d) i."

3.2 DC's RfR 1 has been informed by consultation responses provided by a number of both statutory and non-statutory consultees. A summary of responses received is provided at **Table 3.1**.

Table 3.1: Summary of application consultation responses

Organisation	Date	Type	CD Ref
<i>Statutory consultees</i>			
New Forest National Park Authority	27/4/23	Consultation response	CDB.6
Dorset Council – Dorset NET Heathland Officer, Jade North	27/4/23	Consultation response	CDB.X
Dorset Council – Environmental Assessment Officer, Oliver Rendle	28/4/23	Consultation response	CDB.14
Dorset Council – Dorset NET Ecology & Biodiversity	28/4/23	Consultation response	CDB.X
Dorset Council – Case Officer, Ursula Fay	15/5/23	Email to appellant regarding SANG following meeting of 12/5/23	CDB.X
Natural England	25/5/23	Consultation response – objection, further information required	CDB.21
New Forest District Council	31/5/23	Consultation response	CDB.23
Wessex Water	31/5/23	Consultation response	CDB.X
<i>Non-statutory consultees</i>			
Action for Alderholt	28/4/23	Objection letter	CDB.X
Harbridge Protection Society	4/5/23	Objection letter	CDB.X
Alderholt Parish Council	10/5/23	Objection letter	CDB.13
East Dorset Environmental Partnership	12/5/23	Objection letter	CDB.18
Amphibian & Reptile Conservation Trust	23/5/23	Objection letter	CDB.X
The RSPB	26/5/23	Objection letter	CDB.22
Hyde Parish Council	5/6/23	Objection letter	CDB.X
Gascoyne Estates (Cranborne Estate)	23/6/23	Objection letter	CDB.X

3.3 Meetings were held with Natural England pre- and post-submission, on the 17 June 2022 and the 26 October 2023 respectively (meeting notes at **CDA.72** and **86**), to understand their views as statutory consultee under the Habitats Regulations, including in relation to their letter of objection and request for further information dated 25 May 2023 (**CDB.21**). In their May 2023 consultation response, Natural England raised the following issues:

- **River Avon SAC, Avon Valley Ramsar : phosphates/nutrient neutrality** – need to demonstrate phosphate credits can be secured;
- **New Forest SAC/SPA/Ramsar : recreational impacts** – need to contribute towards measures additional to the Dorset Heathlands SPD;
- **New Forest SAC/SPA/Ramsar : air quality** – not acceptable to scope air quality out of the HRA, need to model for development coming forward around Fordingbridge; and
- **Dorset Heathlands SPA/Ramsar and Dorset Heaths SAC : recreational impacts and supporting habitat for Nightjar:**
 - App 9.4 SANG Management Plan – further detail required regarding SANG phasing and future management;
 - Access to the west of the site from the SANG into Cranborne Common – need to establish a grazed land barrier to the west of the SANG to prevent public access westwards;
 - SAMM [Strategic Access Management and Monitoring] – the applicant can rely on a financial contribution towards mitigation via the SPD;
 - Technical Appendix 7.1 Transport Assessment and Appendix 7.3 Walking, Cycling and Horse Riding Assessment – connections to Verwood via Ringwood Forest should not be promoted; and
 - Requirement for lighting strategy to avoid impacts on foraging Nightjar.

3.4 The Appellant met with DC on 12 May 2023, during which further information requirements relating to the proposed SANG were discussed. DC provided written feedback via email following this meeting on 15 May 2023 (**CDB.X**), and then proceeded to produce their Appropriate Assessment on 27 May 2023 (**CDB.33**). This concluded, as informed by Natural England's advice, that the proposed development would result in an adverse effect upon the integrity of:

- The River Avon European Site as a result of water (phosphate) pollution;
- The Dorset Heathlands European Site as a result of recreational pressure;
- The New Forest European Site as a result of recreational pressure; and
- The New Forest European Site as a result of impacts upon air quality.

3.5 The Rule 6 Parties - Action for Alderholt (Statement of Case, SoC, at **CDC.4**) and Alderholt Parish Council (SoC at **CDC.5**) – have not raised any further grounds for dismissing the Appeal that are not already covered by RfR 1. I do not, therefore, set out a formal response to these parties below, although reserve my position to respond to their evidence once submitted.

- 3.6 Notwithstanding objections being raised by non-statutory consultees at the planning application stage that concerned wider ecological issues, RfR 1 relates solely to HRA matters - that is, whether the Appeal Proposal would result in an adverse effect on the integrity of the International Sites considered, either alone or in combination with other plans and projects.
- 3.7 Other ecological issues pertaining to 'onsite' IEFs, such as potential effects on habitats and protected species, do not constitute grounds for refusal and do not form part of RfR 1.
- 3.8 Furthermore, as relayed in the Committee Report (**CDA.75**) at paragraph 16.245, Dorset NET has reviewed the submitted BNG metric and report and has confirmed that they are 'satisfied' with the approach and calculations. It can therefore be taken as agreed that the Appeal Proposal is capable of securing at least 10% BNG in accordance with the Environment Act 2021, the Biodiversity Net Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024, and local planning policy requirements (including the Dorset Biodiversity Appraisal Protocol). Therefore, it is my understanding and view, that there are no 'onsite' ecology or biodiversity issues that fall to be considered during this Inquiry.

Engagement with Natural England and DC, and Further Information Requirements

- 3.9 Initial responses to the matters underpinning RfR 1 were made by EPR, on behalf of the Appellant, prior to the planning decision being made in July 2023. This included:
- 'Response to Case Officer regarding Proposed SANG' - EPR, 23 May 2023 (**CDA.59**); and
 - 'Response to Natural England Objection' – EPR, 9 June 2023 (**CDA.70**).
- 3.10 These responses provided points of clarification and further information regarding the assessment work carried out and the mitigation proposed, including the potential means for securement, with a meeting held in October 2023 (meeting note is at **CDA.86**) to understand Natural England's position and the scope of any further work required.
- 3.11 During this meeting, Natural England was able to provide clarification regarding the following further information requirements:
- The need to obtain an 'in principle' letter from a suitable mitigation provider to confirm the availability of phosphate credits necessary to secure nutrient neutrality with respect to the River Avon;
 - The need to clarify that the bridleway through Cranborne Common would not be promoted as part of the Transport Strategy;
 - The need to provide clarification regarding the in-combination air quality assessment relating to the New Forest;
 - The need for further information on SANG and development parcel phasing;
 - The need to include an additional walking route during the Phase 1 delivery of SANG; and
 - The need to commit to a financial contribution to New Forest SAMM.

- 3.12 The ongoing further work, and some of the further information emerging, was then discussed with Natural England, DC and their appointed ecological consultant (RSK) in April 2024, during a meeting held in advance of the Inquiry to discuss matters of potential common ground. An initial draft Ecology-specific SoCG (V1 dated 18 April 2023) was discussed during this meeting and was revised following the meeting (V2 dated 19 April 2024 (**CDC.X**)) to reflect the discussions that took place.
- 3.13 At the time of writing, Natural England and DC have not commented on this draft document.

Matters Outstanding

Overview

- 3.14 Table 5 of the draft Ecology SoCG (V2 **CDC.X**) provides a summary of the matters outstanding and actions being taken, as they relate to RfR 1, as discussed between the Appellant, Natural England and DC during the meeting of 18 April 2024. In terms of the main output, an Addendum Information for HRA (ES TA 9.2Ad **CDA.99**) was submitted to DC on 2 May 2024 prior to the Case Management Conference. This provided further information concerning:
- River Avon water quality – revised nutrient calculation and confirmation of available credits via a suitable credit supplier;
 - New Forest and Dorset air quality – revised air quality assessment results and clarification regarding the in-combination assessment of New Forest development sites;
 - Dorset recreational pressure – additional SANG phasing and management information, confirmation that transport routes connecting with Cranborne Common will not be promoted as part of the Transport Strategy, confirmation that a contribution towards SAMM can be secured by S106 and confirmation regarding the delivery of a grazed land parcel to the west of the SANG to act as a barrier to public access to the west; and
 - New Forest recreational pressure – as above, additional SANG information and confirmation that the scheme will make a proportionate financial contribution to the New Forest SAMM project to be secured by S106.
- 3.15 In my view, this Addendum IfHRA report provides all of the further information identified as being required, as accompanied by the revised Transport Strategy and viability assessment, such that all that now remains is to secure the package of mitigation measures via appropriately worded planning condition or obligation. The Appellant is working with DC to agree a list of draft Conditions and the form of the S106 agreement.
- 3.16 However, DC indicated during the meeting on 18 April 2023 that they are likely to take a different view to myself, the Appellant, and indeed Natural England, with regards to what is required to demonstrate, with sufficient certainty, that nutrient neutrality within the River Avon catchment can be achieved.
- 3.17 DC also indicated that further information regarding the detailed design and management of the proposed SANG may still be required to provide certainty that a suitable SANG can be delivered.

Level of Certainty Required in HRA

3.18 The key requirements set out in Regulation 63 of the Habitats Regulations are as follows:

“(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—

(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and

(b) is not directly connected with or necessary to the management of that site,

must make an appropriate assessment of the implications of the plan or project for that site in view of that site’s conservation objectives.

(2) A person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable it to determine whether an appropriate assessment is required.

.....

(5) In the light of the conclusions of the assessment, and subject to regulation 64, the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

(6) In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given.” [my emphases]

3.19 Case law (described in more detail in Appendix 1 of the IfHRA report, **CDA.30**) has examined the interpretation of Regulation 63 of the Habitats Regulations and the stepwise approach to assessment set out therein.

3.20 The ECJ in Waddenzee (Case C-127/02) ruled that a plan or project can only be authorised under Regulation 63 “*where no reasonable scientific doubt remains as to the absence of such effects*”.

3.21 R. (Champion) v North Norfolk DC [2015] 1 WLR 3710 highlights the Advocate General’s Opinion in Waddenzee:

“107. ... the necessary certainty cannot be construed as meaning absolute certainty since that is almost impossible to attain. Instead, it is clear from the second sentence of article 6(3) of the Habitats Directive that the competent authorities must take a decision having assessed all the relevant information which is set out in particular in the appropriate assessment. The conclusion of this assessment is, of necessity, subjective in nature. Therefore, the competent authorities can, from their point of view, be certain that there will be no adverse effects even though, from an objective point of view, there is no absolute certainty.” [Para 47] [my emphases]

3.22 The Habitats Regulations impose a high standard of investigation, as recently reaffirmed in *Wyatt v Fareham* [2023] Env LR 14 at 9(6)-(10). Though in carrying out a fundamentally subjective assessment, the competent authority must make a judgement as to when enough environmental information has been collated to enable a robust assessment to be undertaken, and when sufficient certainty as to the absence of adverse effects has been acquired, taking into account the manner in which the development is proposed to be carried out, including any conditions or restrictions imposed on a consent.

River Avon - Nutrient Neutrality

3.23 As set out in Table 5 of the draft Ecology SoCG, DC indicated that their view is that the Appellant needs to demonstrate that the required phosphate credits are adequately secured, and will be available in the future, not just that they are available now.

3.24 Natural England confirmed in the meeting in October 2023 (**CDA.86**) that:

“NE do not require any formal arrangement committing to the purchase of the mitigation credits, this would be unreasonable and unnecessary at outline stage” [my emphasis]

3.25 EPR’s response to Natural England’s objection, dated 9 June 2023 (**CDA.70**), explains that:

“The securing of mitigation at this stage would be highly impractical, given that the project nutrient budget would in any case need to be recalculated to inform HRA at Reserved Matters stage, whereupon it is likely that the newly redetermined mitigation liability would be very significantly reduced from current projections (as set out in Chapter 6 of the IfHRA), due to the effects of detailed drainage design and the anticipated adoption of a formal commitment to the optimisation of wastewater treatment standards from 2030.” [my emphasis]

3.26 In my view, therefore, the Appellant has done all that they can at this outline planning stage to demonstrate, with sufficient certainty, that nutrient neutrality can be achieved.

3.27 The revised nutrient budget calculation provided within the Addendum IfHRA (**CDA.99**), which uses Natural England’s most recent February 2024 nutrient budget calculator and takes account of the post-2030 improved treatment standards, sets out a ‘worst-case’ in perpetuity mitigation liability of 95.82 kg P/year; noting that this takes no account of the mitigation benefits that would be gained through delivery of SuDS.

3.28 The letter from the operator of the Bickton Strategic Mitigation Scheme (**CDA.84**), one of a number of River Avon phosphate credit suppliers, confirms that the scheme has sufficient credits available and that they would be willing to supply the Appeal scheme with credits to mitigate up to 100kg P/year (I would note that it is the Appellant’s understanding that between 600-700 credits are currently available within this scheme).

3.29 The Appellant proposes to secure the requirement to purchase the requisite number of phosphate credits, calculated at the detailed design stage for each Reserved Matters application, through a form of restrictive planning condition or planning obligation. The basis for such an approach being acceptable under the Habitats Regulations; in light of the principal planning test relating to the use of planning conditions; and specifically in relation to precedent set for the securing of nutrient mitigation, is set out within EPR’s response to Natural England’s

objection (**CDA.70**). This note sets out Appeal precedent on the matter of restrictive conditions in the form of the Bunwell Street, South Norfolk Appeal (APP/L2630/W/21/3289198) and also makes reference to the adopted approach to securing nutrient neutrality across South Hampshire in relation to the Solent Marine sites.

3.30 More recent Appeal decisions, in the form of the Appeals at Land at Broadbridge Farm (APP/Z3825/W/23/3321658, **CD.X**) and Land West of Ravenscroft (APP/Z3825/W/22/3308455 & APP/Y9507/W/22/3308461, **CD.X**), have further validated the use of restrictive planning conditions as a means of securing HRA mitigation (though relating to water neutrality as opposed to nutrient neutrality).

3.31 In the first Appeal, paragraph 55 of the decision states:

“In order to achieve water neutrality, the appellant proposes to mitigate the increased demand for mains water from the proposed development through a combination of on-site water reduction measures and an off-site offsetting scheme. The S106 UU and Grampian condition would act to prevent development proceeding until the offsetting scheme is in place, and, therefore, the mitigation is sufficiently secured. As such, there is no reasonable scientific doubt that the proposed development would be water neutral.” [my emphasis]

3.32 In the second joint Appeal, paragraph 108 states:

“Overall, the evidence before me demonstrates that the strategic and site specific offsetting schemes are likely to work in practice, to deliver the required reduction in mains water usage to offset the proposed development, within the lifetime of the planning permissions sought. The S106 UU and Grampian condition would act to prevent development proceeding until one of the offsetting schemes is in place, and, therefore, the mitigation is sufficiently secured. As such, there is no reasonable scientific doubt that the proposed development would be water neutral. Whilst this is a high bar, case law establishes that this test does not require absolute certainty and decisions are often necessary on the basis of imperfect evidence.” [my emphasis]

3.33 Overall, therefore, I am confident that a robust assessment of the phosphate mitigation requirement has been made, at this outline stage; that sufficient mitigation credits are and will be available for purchase to secure nutrient neutrality; and that a restrictive condition provides sufficient certainty that development would not proceed until the requisite mitigation had been acquired. There can therefore be confidence that the Appeal Proposal will not result in an adverse effect upon the integrity of the River Avon International Sites either alone or in combination with other plans and projects, and that the requirements of the Habitats Regulations can be met.

Dorset Heathlands & New Forest - Proposed SANG

3.34 DC has indicated that further information regarding the detailed design and management of the proposed SANG may be required, though has not, to date, specified what additional information is required.

3.35 In my view, it has been clearly demonstrated through the submitted documentation that the Appellant is in control of land in a suitable location and of a sufficient extent to deliver the required quantum of SANG, and that this land can be sufficiently enhanced and managed in

perpetuity so as to meet the relevant quality standards expected of a SANG, thereby mitigating the effects of the Appeal Proposal. DC's Appropriate Assessment (**CDB.33**) acknowledges at ep8 that:

“Natural England have confirmed that the SANG area of 53.4ha is suitable for the proposed development, with the Cross Roads Plantation SANG compartment being particularly well placed to intercept existing public pressures.”

- 3.36 The submitted viability assessment has accounted for the costs of delivering the SANG and an established approach for the in perpetuity governance and funding of the SANG is proposed, as described within the Addendum IfHRA.
- 3.37 Further detail regarding the specification for delivery of habitats and infrastructure, as well as management and maintenance thereafter, would be expected at the detailed design stage, though this can be secured through planning condition or obligation.
- 3.38 Overall, therefore, there can be sufficient certainty that a satisfactory SANG can be delivered as part of the proposed development, and that when combined with contributions towards the provision of SAMM on the Dorset Heathlands and New Forest, that the Appeal Proposal would not result in an adverse effect on the integrity of these International Sites as a result of increased recreational pressure, either alone or in combination with other plans and projects, and that the requirements of the Habitats Regulations can be met.

4. SUMMARY AND CONCLUSION

Summary

- 4.1 In this Proof of Evidence relating to ecology and nature conservation, I have set out the planning and ecological background of relevance to the assessment of the Appeal Proposal. Comprehensive survey and assessment work has been carried out by the Appellant's appointed consultants between 2019 to present. An extensive suite of mitigation measures is proposed, such that no significant negative residual effects are predicted to remain for onsite receptors.
- 4.2 Due to the scale of habitat enhancement and creation proposed within the SANGs and areas of blue and green infrastructure, as well as features incorporated within the built realm, the Appeal Proposal will deliver net gains in biodiversity, with significant positive residual effects predicted for foraging bats, birds (including breeding birds, Barn Owl and Nightjar), amphibians (including GCN), reptiles and invertebrates. As a result, DC's RfR 1 does not concern onsite ecology or BNG.
- 4.3 RfR 1 asserts adverse effects on the integrity of the Dorset Heath(land)s, River Avon and New Forest International Sites afforded protection under the Habitats Regulations, owing to the need to demonstrate that appropriate mitigation can and will be provided.
- 4.4 The Appellant has worked closely with Natural England, the statutory adviser for nature conservation, to refine the mitigation strategy and to develop the package of environmental information necessary to reach a positive HRA conclusion. Further information has been provided to narrow the issues underpinning RfR 1, as set out within Addendum Information for HRA (**CDA.99**). What now remains is for the means of securing the comprehensive package of mitigation measures, summarised for convenience in Table 4 of the draft Ecology SoCG (**CD.X**), to be detailed through the wording of relevant planning conditions and/or planning obligations.
- 4.5 In my view, on the basis of these measures being adequately secured, there is sufficient certainty, beyond reasonable scientific doubt, that the Appeal Proposal would not result in an adverse effect on the integrity of the Dorset Heath(land)s, River Avon and New Forest International Sites, either alone or in combination with other plans and projects.

Conclusion

- 4.6 I have, within this proof of evidence, summarised the package of mitigation measures that engagement with both Natural England and DC has determined need to be secured to address RfR 1. My professional opinion is that, subject to the securement of the overall proposal, there are no valid ecology and nature conservation grounds for this Appeal to be dismissed.
- 4.7 In my view, the Appeal Proposal can be delivered in full compliance with the Conservation of Habitats and Species Regulations 2017 (as amended), as well as other nature conservation legislation and planning policy.