

260575 - enforcement appeal for Land @ Bigwood House, Waterloo Rd - 6005699 - RFS/2022/087602

1. Introduction

This statement addresses the ecological implications arising from the unauthorised use of land for non-agricultural storage and office purposes, including the importation of material for the formation of a hard surface. It focuses specifically on potential impacts to reptiles, amphibians and bats, and on the proposal's compliance with biodiversity policies both nationally and locally.

This statement considers ecological matters only. It does not assess impacts to tree root protection areas, arboricultural matters, or wider landscape and visual effects, which are addressed separately.

2. Site Context and Baseline Conditions

The enforcement notice requires the land to be restored to its condition prior to the breach. The lawful ecological baseline is grassland.

Prior to the breach, a neighbouring parcel of land immediately west of the application site was subject to reptile presence/absence surveys undertaken between 2015 and 2017. These surveys, carried out by ECOSIA and reported within the Ecological Impact Assessment submitted in support of planning application reference 191068 (ECOSIA, May 2021), recorded a low population of slow worm and a low population of common lizard. The Ecological Impact Assessment also described the reptile habitat suitability of the land accordingly:

“The reptile appraisal was based on an assessment of the suitability of the habitat present within the site to support a population of reptiles. Reptiles particularly favour scrub and rough grassland interfaces and the presence of these is a good indication that reptiles may be present on-site. In addition, reptiles may utilise features such as bare ground for basking, tussocky grassland for shelter and compost heaps and rubble piles for breeding and/or hibernating.”

The enforcement site lies between arable land to the west and an existing storage facility to the east, beyond which is an area of lowland mixed deciduous woodland, a Habitat of Principal Importance under Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006. A tree line along the southern boundary of the site forms an important ecological corridor, running parallel to the railway line and providing connectivity between habitats to the west and east. This corridor also links directly to a small area of lowland mixed deciduous woodland.

Based on ecological surveys of the adjacent land within the submitted ECIA, May 2021 for planning ref: 191068 and records held by the Thames Valley Environmental Records Centre; the surrounding area supports suitable habitat for reptiles, amphibians, badger,

hazel dormouse, nesting birds and great crested newt, as well as notable invertebrates including stag beetle, white-letter hairstreak and common toad.

Although the breach has resulted in damage to the site, aerial imagery indicates that the enforcement site still has potential to support, at least in part, a range of suitable habitats. The ongoing presence of rubble piles and waste material means that areas of structural and refugia habitat remain. The pond and surrounding terrestrial features, including tree lines and areas of grassland, are still capable of supporting amphibians, as well as providing foraging and commuting opportunities for bats. Grassland and marginal vegetation, despite being adversely affected, continue to offer suitable habitat for reptiles, while retained tree lines and scrub remain capable of supporting nesting and foraging breeding birds. Furthermore, the site continues to form part of a wider connected landscape, facilitating badger movement between adjacent woodland and surrounding arable land. As such, the continued damaging activities are likely to be having an ongoing adverse impact on these species and their habitats.

3. The Unauthorised Change of Use and Resulting Impacts

The site has undergone a gradual but persistent unauthorised transformation. This has included the loss of grassland vegetation, degradation and thinning of the southern treeline, and the ongoing dumping and storage of building materials and waste. Collectively, these activities represent a material change in land use and have resulted in sustained ecological harm, particularly to reptiles and amphibians, breeding birds, and potentially foraging and commuting bats.

The alteration of the land has involved both the removal of grassland habitat and the poaching and compaction of soils (see Appendix 1, Photograph 3). Given the known presence of reptiles on adjacent land, the presence of suitable foraging and hibernating features on this site, it is likely the land support species such as slow worms and common lizards. These species frequently utilise disturbed habitats including brownfield land, gardens, allotments, grassland, and field margins, often sheltering within topsoil and vegetation cover. The repeated disturbance of soils, resulting in poaching of soil, coupled with the storage of heavy materials, is highly likely to have resulted in direct mortality of reptiles and amphibians.

This risk is significantly heightened by the timing of works. Reptiles and amphibians enter a state of torpor between October and March, during this period, they hibernate underground, often along habitat margins and within close proximity to linear features such as treelines. Evidence contained within the case officer's photographs (Appendix 1) indicates that ground disturbance, including the installation of hardstanding, soil compaction, and material storage, has occurred during these sensitive months. Such activities would likely result in the injury or killing of hibernating individuals, constituting direct ecological harm.

In relation to breeding birds, aerial imagery (Appendix 2) demonstrates that sections of the southern treeline were thinned between 2018 and 2023, with further degradation evident in more recent imagery. Whilst the exact timing of these works is unknown, the absence of this information raises a significant risk that vegetation clearance may have occurred during the bird breeding season. The continued erosion of this treeline reduces nesting opportunities and undermines the ecological function of the site.

A case officer visited the site in September 2024 (Appendix 1) and recorded the installation of a two-storey portacabin adjacent to the western boundary. The western linear vegetation acts as a commuting and foraging corridor for bats, with species such as serotine, noctule, Natterer's, and soprano pipistrelle recorded in the area. The portacabin appears to be fitted with external lighting, likely floodlights, although this is not confirmed. In the absence of any demonstrated compliance with guidance on bats and artificial lighting, there is a high likelihood that such illumination is causing disturbance to bat movement and foraging behaviour, further degrading the ecological value of the site and neighbouring land.

4. Legal and Policy Framework Implications

All native reptiles and amphibians receive protection under the Wildlife and Countryside Act 1981, which makes it an offence to intentionally or recklessly kill or injure these species. Furthermore, species such as slow worm, common lizard, and common toad are listed as Priority Species under Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006 and are also recognised within the Wokingham Biodiversity Action Plan (2012–2024).

The unauthorised activities on site, such as the habitat removal, soil disturbance, and fragmentation of ecological connectivity between the eastern and western parts of the landscape, will likely have resulted in both direct harm (mortality and injury) and indirect harm (habitat loss and fragmentation) to reptiles and amphibians. In the absence of any mitigation or compensation measures, the development clearly conflicts with Wokingham Core Strategy Policy CP7 (Biodiversity), which requires that harm to priority species be avoided, mitigated, or compensated.

Similarly, the degradation of the southern treeline and the installation of the portacabin raises significant concerns in relation to bats. All bat species and their roosts are strictly protected under the Conservation of Habitats and Species Regulations 2017, as well as the Wildlife and Countryside Act 1981. These protections make it an offence to deliberately disturb bats, damage or destroy roosts, or impair access to essential habitats.

There is no evidence that the site has been subject to appropriate ecological assessment to determine the presence of bat roosts within the treeline, despite its progressive removal and degradation. The loss and fragmentation of this linear feature,

combined with potential artificial lighting from the portacabin, is likely to disrupt bat foraging and commuting behaviour. This represents a failure to safeguard an important ecological corridor and undermines compliance with both the Conservation of Habitats and Species Regulations 2017 and local policy (CP7:Biodiversity of Core Stratify).

In summary, the collective and ongoing unauthorised changes to the site have resulted in ecological harm, including the likely killing and disturbance of reptiles and amphibians, the degradation of bird nesting habitat, and the disruption of bat foraging and commuting corridors. These impacts have occurred in the absence of any ecological assessment, mitigation, or compensation measures.

As such, the development fails to comply with the requirements of the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2017. Furthermore, it is contrary to Section 41 of the Natural Environment and Rural Communities Act 2006, which affords priority status to the affected species. At the local level, the development is in clear conflict with Wokingham Core Strategy Policy CP7 :Biodiversity, which requires the protection of priority species and the implementation of appropriate mitigation and compensation where harm cannot be avoided. It also fails to accord with the objectives of the Wokingham Biodiversity Action Plan (2012–2024).

Finally, the proposal conflicts with Chapter 15 of the National Planning Policy Framework, which requires development to minimise impacts on biodiversity and provide net gains, by protecting and enhancing ecological networks and safeguarding priority habitats and species. In this instance, the development would result in an overall net loss of habitats, with insufficient evidence to demonstrate that unacceptable harm has been avoided, adequately mitigated, or compensated for, contrary to national policy.

5. Assessment of Submitted Information

The appellant has submitted an Enforcement Notice Appeal Statement, within which the sections relating to ecology are contained in paragraphs 5.28–5.33. In summary, the statement declares that no ecological surveys have been undertaken because contamination at the site is supposedly so severe that the presence of any living species can be immediately ruled out. The only evidence provided in support of this claim is a single photograph of a dead fish (Figure 9 of the statement). In addition, the appellant suggests that the presence of human faecal contamination within the pond has resulted in all wildlife having died out.

These statements are not supported by any assessment or report from a suitably qualified ecological or contamination specialist, identifying the nature or extent of contamination present, nor its actual or likely impacts on habitats and relevant species.

In the absence of robust professional evidence, these claims are unsubstantiated and cannot be relied upon.

Furthermore, the statement addresses ecological matters solely in relation to amphibians and the pond itself, and fails to consider the potential presence of other protected or priority species, including bats, breeding birds and reptiles. As such, the Enforcement Notice Appeal Statement does not adequately address or overcome the identified ecological concerns. The site therefore remains non-compliant with Policy CP7 (Biodiversity), Chapter 15 of the National Planning Policy Framework, and relevant national legislation.

6. Summary

In conclusion, the application site has repeatedly undermined, and continues to undermine, the objectives of the European Habitats Directive and the Wildlife and Countryside Act 1981. The proposal does not comply with Wokingham Core Strategy Policy CP7 (Biodiversity).

In respect of Ground (a) of the Enforcement Notice appeal—namely that planning permission ought to be granted for the alleged breach of planning control—the development is not policy compliant. For the proposal to be considered compliant, all works associated with the erosion and removal of the southern tree line must cease, and suitable compensation planting must be secured. This is necessary to ensure the continued protection of the green corridor and ecological network, in accordance with the Wokingham Core Strategy and the NPPF.

Should further removal of the tree line be proposed, a Preliminary Roost Assessment would be required, supported by activity surveys to assess the importance of the linear feature for foraging and commuting bats. Appropriate mitigation and compensation would need to be identified and secured. In addition, artificial lighting associated with the portacabin and wider site has the potential to adversely affect bats and their resting places. A sensitive lighting strategy would therefore be required to ensure compliance with the European Habitats Directive and to avoid harm to protected species.

In relation to reptiles, the extent of damage already incurred cannot be fully compensated. If planning permission were to be sought, the storage of building waste would need to be strictly controlled, limited to defined areas, and placed on pallets to prevent colonisation by reptiles and amphibians for shelter or hibernation. Habitat enhancement measures, including the provision of hibernacula, would be required along the southern section of the site in close proximity to the retained tree line. A minimum 2-metre buffer zone should be maintained along the southern tree line to prevent further erosion of this habitat.

Any ground disturbance works, including the installation of hardstanding, must be undertaken outside the reptile and amphibian hibernation period to avoid the deliberate injury or killing of protected species.

The following conditions are recommended to secure appropriate mitigation and compensation for priority and protected species:

Conditions.

Lighting design strategy for light-sensitive biodiversity – Condition

Prior to occupation, a “lighting design strategy for biodiversity” for buildings, features or areas to be lit shall be submitted to and approved in writing by the local planning authority. The strategy shall:

- a. identify those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and
- b. show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places. All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority

Reason: To policy compliance with national legalisation Wildlife and Countryside Act 1981, Conservation of Habitats and Species Regulations 2017 and Wokingham Core Strategy, Policy CP7.

Species Compensation and Enhancement Condition

Condition: Prior to construction, a scheme for ecological permeability and biodiversity compensation and enhancement, such as the incorporation of two permanent bat roosting feature(s) per dwelling and access points for hedgehog to gardens, shall be submitted to and agreed in writing with the Local Planning Authority. The approved details thereafter shall be implemented, retained and maintained for their designed purpose in accordance with the approved scheme. The scheme shall include, but not limited to, the following details:

- a) Description, design or specification of the type of feature(s) or measure(s) to be undertaken;
- b) Materials and construction to ensure long lifespan of the feature/measure
- c) A drawing(s) showing the location and where appropriate the elevation of the features or measures to be installed or undertaken.
- d) When the features or measures will be installed within the construction, occupation, or phase of the development.

Reason: To ensure the development is policy compliant with regards to Policy TB23: Biodiversity and Development of the Wokingham Borough Development Plan

Biodiversity method statement condition

No further development shall take place (including any demolition, ground works, site clearance) until a method statement for habitat protection, amphibians, reptiles breeding birds, mammals and bats has been submitted to and approved in writing by the local planning authority. The content of the method statement shall include the:

- a) purpose and objectives for the proposed works;
- b) detailed design(s) and/or working method(s) necessary to achieve stated objectives (including, where relevant, type and source of materials to be used);
- c) extent and location of proposed works shown on appropriate scale maps and plans;
- d) timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
- e) persons responsible for implementing the works;
- f) initial aftercare and long-term maintenance (where relevant);
- g) disposal of any wastes arising from works.

The works shall be carried out strictly in accordance with the approved details and shall be retained in that manner thereafter.

Reason: To ensure that biodiversity, protected and priority species are not adversely affected by the proposals. Relevant policy: NPPF 2024 paragraph 198 Section 15 Core Strategy policies CP7 and Managing Development Delivery Local Plan policy TB23

Appendix 1: Photographic evidence documenting changes to the site and materials storage, recorded during site visits by the case officer.

15 th September 2022 – Case Officer Visit	15 th September 2022 – Case Officer Visit	24 th October 2023 – Case Officer Visit
		
24 th October 2023 – Case Officer Visit	18 th November 2025	17 th September 2024 – Case Officer Visit
		

Appendix 2: Google aerial imagery illustrating changes in land use over time.

2018



2020



2021



2022



2023



2026

