

- a) **DOV/20/00419 – Outline application with all matters reserved for up to 210 dwellings including up to 12 self-build plots, together with up to 2,500 sqm of office (Use Class B1) floorspace and up to 150 sqm of retail (Class E) floorspace - Almond House, Betteshanger Sustainable Parks, Sandwich Road, Sholden**

Reason for report – Updated ecology considerations and number of contrary views (209)

b) **Summary of Recommendation**

Grant outline planning permission for the development subject to conditions and a s106 legal agreement.

c) **Planning Policy and Guidance**

As per previous Planning Committee report of 25 February 2021 attached as an annex.

National Planning Policy Framework (NPPF) (2019)

Key Paragraphs:

Paragraph 170 - Planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, recognising the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services and minimising impacts on, and providing net gains for, biodiversity. Preventing both new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability and remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

Paragraph 175 - When determining planning applications, local planning authorities should apply the following principles:

- a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;
- b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;
- c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and
- d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

d) **Relevant Planning History**

As per previous planning committee report of 25th February 2021 meeting (attached as an annex)

e) Consultee and Third-Party Responses

As per previous planning committee report of 25th February 2021 meeting (attached as an annex)

All representations can be found in full on the online planning file. A summary has been provided below of the latest comments received following the submission of amended documentation. All previous comments are still relevant and are set out in annexed committee report.

DDC Ecology: The document sets out the intention to leave most of the detail of habitat creation, to compensate for the loss of priority habitat type, open mosaic habitat on previously developed land (OMH), to the post consent stage. It is also intended to leave the details of protected and priority species mitigation and compensation to the post consent stage. Since confidence in the location, quality and quantity of compensatory habitat creation was essential to the removal of my objection, I therefore have to sustain my objection. The document also omits the DEFRA biodiversity metric calculations which were needed to demonstrate that the applicant is able to achieve a biodiversity net gain, in line with the policy requirements of the NPPF.

In reference to the proposed area for compensatory habitat creation with the country park, the report states, '*this includes the entirety of the area identified by the natural environment officer*'. This statement is incorrect since the area which I had originally proposed was approximately 7 hectares. The applicant subsequently divided my proposed area into 3 sub areas (1a, 1b and 1c). Unfortunately, the applicant does not wish to proceed with sub areas 1b and 1c, which substantially reduces the area of suitable land for attempted compensatory habitat creation.

I am not able to agree to a 'minimum like for like approach,' of only providing an area of 4.68 hectares of compensatory habitat, i.e. an area equal to that lost on the development site. It is established ecological best practice to provide a larger area of compensatory habitat creation than the area to be destroyed, because compensation is a last resort and is never guaranteed to work.

I reiterate that the site has huge ecological significance, despite the lack of legal protection or designation as a non- statutory wildlife site. It is therefore imperative that the applicant demonstrates environmental responsibility by following the mitigation hierarchy and achieves genuine habitat compensation, in line with the policy requirements of the NPPF and also aims to meet the legal biodiversity net gain target set out in the draft Environment Bill. The achievement of any level of biodiversity net gain is always in addition to habitat compensation. It is therefore essential that the compensation offer is as robust and ambitious as possible.

Turtle doves: The intention is to leave surveys for this species within the country park to the post consent stage. It is important to state that any compensatory habitat creation for turtle doves should be carefully targeted to achieve the best possible results and should not involve destroying areas of existing high value habitat types.

The wording of the proposed condition dealing with a biodiversity offsetting scheme needs to be amended to guarantee an area in excess of the OMH being lost to development. Attempted compensatory habitat creation should form one block within Area 1 of the park. It is important to create one contiguous block of habitat rather than several small areas of fragmented habitat to reduce the edge effect which smaller areas of habitat are sensitive to. In ecological science, the edge effect is essentially

the issue of reduced ecological viability that occurs when habitats exist as small fragmented blocks and are vulnerable to erosion and disturbance factors coming from surrounding land.

I am not in agreement to the possibility of finding a completely different compensation site to Betteshanger county park, at the post consent stage. The creation of compensatory OMH is dependent upon the special soil types found within brownfield sites such as former collieries. The likelihood of the applicants finding another former colliery site in Dover district, where they would have the management control to attempt OMH creation is highly unlikely.

CEMP condition: This condition should address impacts upon legally protected and priority species present on the development site at the time of the construction works.

Plan: This plan still includes Area 2 within the country park, which I have already rejected due to the presence of legally protected lizard orchids, recorded during my September survey of the park. I also found very limited opportunity for OMH creation within this area. The other alternative areas proposed by the applicant shown on this plan are small and fragmented, which for reasons already stated would be ecologically unsound as a compensation offer.

Council for the Protection of Rural England (CPRE): CPRE Kent, the countryside charity remains concerned that the high environmental value of Betteshanger is not being addressed adequately. Technical note 8, goes some way to recognize the high environmental value of Betteshanger Colliery but falls short of acknowledging its significance and rarity in terms of biodiversity. Open Mosaic Habitat (OMH) takes approximately 15 to 20 years to become established and mature enough to sustain an array of flora and fauna and this can be said of Betteshanger. The area has naturally regenerated with very specific flora and fauna moving in over time. Each OMH is unique in its own right. Not all support the same biodiversity, though there may be similarities. Betteshanger supports the lizard orchid, pennyroyal and turtle dove.

Furthermore, according to Wildlife and Countryside Link, 50% of wildlife rich brownfield sites have either been lost, damaged or are under threat, as with Betteshanger currently. Betteshanger is also unique due to being an old coal mine as it provides a distinct setting and substrate which attracts very particular types of flora and in turn fauna. Betteshanger's attractiveness to wildlife is further compounded by being surrounded by a mature canopy of broadleaf mixed woodland and scrub, which flanks the area on most sides. This mature woodland and scrub provide a sheltered area for the turtle dove to forage in and retreat from when threatened. CPRE Kent has previously pointed out that being ground seed and granivorous feeders, turtle doves are extremely vulnerable to predation. Its highly likely turtle doves thrive at Betteshanger because of the surrounding mature trees and easy accessibility to food on the OMH. To recreate this habitat in fragmented bits within the country park, we feel would not be viable nor constitute a 10% biodiversity net gain or indeed any net gain. Breaking up one large site into several isolated smaller bits cannot constitute a net gain and may lead to the mitigation becoming unviable and unsustainable. Furthermore, do not agree with the practice of sacrificing one habitat and replacing with another as compensation for the loss of habitat on a site due to development.

Aspect Ecology have provided insufficient tangible evidence-based research or data to demonstrate their mitigation is deliverable or viable. There is no guarantee to the mitigation being successful and not having any adverse impact on the turtle doves and other rare plants and wildlife currently dependent upon Betteshanger. This is contrary to the NPPF guidelines. OMH is regarded as being of 'high environmental value.' A

site should be considered of high environmental value when it contains habitat and/or species listed under Section 41 Natural Environment and Rural Communities Act 2006. Wildlife and Countryside Link state statistics tell us that just 6% - 8% of brownfield sites fall into the high environmental value classification. This is a tiny amount and further demonstrates how rare and valuable Betteshanger is in terms of its contribution to biodiversity.

Likely significant harm to Betteshanger's biodiversity cannot be avoided. The mitigation on offer is clearly not adequate, and no data has been offered to support the claims made. Therefore, urge the LA to either wait with their decision until such time as robust data becomes available to demonstrate beyond doubt that the mitigation of OMH is likely to be successful or refuse permission outright.

More generally, we are extremely disappointed to note the applicant's unwillingness to commit to a minimum 10% biodiversity net gain. Regardless of the technical justifications the applicant seeks to provide, by taking this position they are clearly demonstrating there is no genuine concern for the sites biodiversity as they only wish to provide the bare minimum that they can get away with. In any event, it is CPRE Kent's view that material weight should now be given to emerging policy DM38 of the new Local Plan (which amongst other consideration seeks 10% Biodiversity Net Gain) given the Government's commitment to proceed with the Environment Bill within the Queen's speech of the 11th May 2021. At a very minimum and should the Council be minded to approve the application, the Section 106 legal agreement should be drafted so as to secure this level should the requirement become law prior to the commencement of development.

Public Representations:

A total of 209 objections have been received to date. This includes a petition with 3000 signatures objecting to the proposal. These are summarised in the previous report attached. Additional comments are listed below:

- The cumulative impact of development in the area must be considered
- Development on the site is in contradiction to the NPPF
- A different site should be identified for the proposed development that is less ecologically diverse
- Biodiversity evidence suggests application should be refused
- Destroying a rare habitat
- DDC should listen to experts
- The Design & Access statement doesn't address the amendments, still showing development on the eastern parcel that has been stated to be removed, this is confusing.
- Beavers have been identified in the eastern area of the site
- Proposals violate key principles of mitigation and offsetting
- Still highly uncertain whether a rare plant (Grass Poly) can be adequately compensated for through translocation
- The Geology of the site requires further investigation before the application is determined
- Ecology considerations have not yet been answered and agreed on, these need to be determined prior to the decision and should not be addressed in a s106 agreement or planning conditions
- Full evidence is required before a decision is issued
- object to the applicant using S106 agreements to avoid having to resolve the outstanding ecology issues before planning permission is decided.

- We need to know exactly which areas of the Park will be used for compensation and the current biodiversity value is before a decision.
- Mitigation of Turtle Doves is inappropriate and will loss a breeding site
- Draft policy DM 38 is relevant now
- 10% biodiversity net gain needs to be shown before determination
- How can it be decided that mitigation is adequate without details
- Receptor sites and habitats need to be identified before a decision is reached, they may not be appropriate
- Given the rarity of Grass Poly and that Betteshanger is the only site in Kent where it is found should at the very least, require confirmation of receptor sites, details of the translocation approach and the measures to increase likelihood of success.
- No evidence that Grass Poly can be translocated
- The developers can not be relied upon to fulfil ecological requirements

22 representations have been received in support of the proposals and are set out in the previous report.

An update on any additional representations will be provided verbally to Committee Members at the Committee meeting.

f) 1. **The Site and the Proposal**

As per previous committee report of 25th February 2021 attached as an annex.

2. **Main Issues**

2.1 The main issues for consideration in this report are:

- Update on the application
- Ecology and Biodiversity
- Development Contributions summary/update
- The Planning Balance & Conclusions

Assessment

Material Considerations as set out in the previous Planning Committee report of 25 February 2021 attached as an annex.

Update on Application

2.2 This application was first reported to the DDC Planning Committee on 25th February 2021, following extensive negotiations with the applicant to seek to resolve the extensive ecology and biodiversity issues arising from the proposed development of the application site. All other material planning considerations had in officer's opinions been resolved and were set out in 25th February committee report. The previous report remains germane to the determination of this planning application. As was explained in the previous report, agreement had not been reached, at that time, as to the best way to satisfactorily resolve the ecological considerations, with areas of disagreement existing between the parties as to the proper approach to be adopted.

2.3 As a result of the outstanding issues, and due to the need to progress the matter, Members were asked to indicate whether they would be minded to approve the

principle of the residential development of the site in accordance with the outline application. Members resolved at 25th February committee that they would be minded to approve the proposed development in principle, subject to a further report back to planning committee on ecology matters for a final decision.

- 2.4 This application is therefore being reported back to Planning Committee following further discussions with the applicant to address the ecology concerns in relation to this outline planning application. An updated Ecology Technical Report has been submitted (publicly available) which sets out in detail how the ecology matters can be dealt with through specific planning conditions and the S106 legal agreement. This report therefore sets out the updated position and detailed clarification on the ecology aspects of the proposal. Nevertheless, the 25th February committee report (annexed) sets out the key ecological and biodiversity features relevant to this application and this is still applicable, although is updated accordingly in this report.

Ecology and Biodiversity

- 2.5 The position in respect of ecology and biodiversity on the application site has been the subject of significant discussion since the submission of the application and has evolved throughout the course of the application. It is also expected to continue to be an ongoing and evolving package of measures to be controlled through planning conditions and the s106 legal agreement should outline planning permission be granted. At present, it is the case that there are still differing opinions between the experts on the best and proposed approach to the protection and long-term management of the specific and important species and habitats, in terms of both the impacts on site and mitigation and compensation off site. Most of the discussions with the applicants since the application was last reported to planning committee have focussed on the resolution of the proposed off-site mitigation and compensation which is principally proposed on Betteshanger Country Park. A revised Ecology Technical Note has been updated and the final version of this provided on the public website for any comments.
- 2.6 It is not possible or necessary within the scope of this committee report to deal with the all the individual impacts and detailed considerations on all the different species, habitats, flora and fauna that have been identified and raised during the course of considering the application. It is important to note that the following section is a summary of the key issues and the mitigation and compensation proposals that have been put forward for the site, rather than a discussion of all the individual species, flora and fauna that are all important in their own right and all have their own part to play within the wider discussion of biodiversity and ecosystems.
- 2.7 The application site is being used by a wide range of protected species, birds, invertebrates, and flora and fauna, is in certain respects unique and of high importance at both a county and national level, due to being rare, endangered, or threatened. The development site has also been identified as containing a number of Priority Habitats including– Open Mosaic Habitat (OMH) and Deciduous Woodland. Not least the site is being used by:
- 4 pairs of breeding Turtle Doves, a priority & threatened species
 - Invertebrates - An endangered spider (nationally rare & near threatened) and a rare ground bug

- Grass-poly – nationally rare, a priority species and protected under Schedule 8 of the Wildlife and Countryside Act 1981 (as amended)
- Pennyroyal - nationally rare, a priority species and protected under Schedule 8 of the Wildlife and Countryside Act 1981 (as amended)
- 6 species groups of Bats (Common Pipistrelle, Soprano Pipistrelle, Nathusius' Pipistrelle, Myotis sp., Nyctalus/Eptesicus sp. and Brown Long-eared)
- Badgers - 2 main setts recorded within the woodlands in the south-western and north-eastern parts of the site
- Great Crested Newt - in small pond located centrally within the site
- Reptiles – low populations, one adult Common Lizard and two adult Slow-worms
- Birds – an assemblage of birds has been recorded with other priority species including Cuckoo, Starling, Song Thrush, Bullfinch and Linnet.

2.8 All of the above species and flora, as well as a number of others, are protected by national and international law under the following legislation and species priority lists.

- The Wildlife and Countryside Act 1981 (as amended) and listed as Schedule 8 species, requiring protection under this legislation. Mammals have legal protection under this legislation.
- Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 places duties on public bodies to have regard to the conservation of biodiversity in the exercise of their normal functions. It publishes a list of habitats under Section 41 which are of principal importance for conservation in England, 'Priority Habitats'. Priority Habitats identified on the site include: 'Open Mosaic Habitats on Previously Developed Land' (OMH) - comprising the development platforms proposed for development, also 'Hedgerows', 'Deciduous Woodland', 'Ponds', 'Reedbeds' and 'Lowland Fen'.
- There is also a national list – England Red List (2014) and IUCN Red List of Threatened Species, 2001. These list species of ecological significance that are vulnerable or threatened. There is also a list of plants in the Kent Rare Plant Register. Further, specialist organisations such as Kent Wildlife Trust (KWT) hold their own lists of species requiring specific protection.

2.9 National planning policy on the conservation of the natural environment is contained in the NPPF in paragraphs 170 – 177, with the key paragraphs set out in the policy section above. Further guidance is set out in the National Environment Planning Policy Guidance (amended 2019). The current Core Strategy does not have any specific policies for ecology and biodiversity, however, Policy CP7- Green Infrastructure Network is most relevant.

2.10 In summary, the NPPF paragraphs 170 and 175 are considered the key tests for planning and decision makers to consider.

Paragraph 170(d) – *minimising impacts on and providing net gains for biodiversity, including coherent ecological networks that are more resilient to current and future pressures.*

Paragraph 175 – *When determining planning applications LPA's should apply the following principles: (a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; (c) development resulting in the loss or deterioration of irreplaceable habitats ... should be refused, unless there are wholly exceptional reasons and a compensational strategy exists.*

Therefore Paragraph 175 (a) identifies the determinative issue to resolve i.e. is the biodiversity harm adequately mitigated, or can it be compensated for?

- 2.11 A number of parties have referred to the relevance of Draft Local Plan Policy DM 38, however the Draft Local Plan and its policies are only at the consultation stage and although a material planning consideration in the determination of this planning application, due to being at this early stage in the plan making process have only limited weight. Consequently, they shouldn't materially affect the assessment of this application and the recommendation as set out.
- 2.12 In a similar position is the Draft Environment Bill, which although of significant relevance, is only currently in a draft form and has not been formally passed as national legislation with full policy weight. Its requirements, including a minimum of 10% biodiversity net gain do not therefore impose any requirement on the Council in the planning process at this stage.
- 2.13 In response to the many and highly informed ecology/biodiversity objections, including a number of recognised ecology organisations and statutory consultees, updated ecology documents and assessments were submitted by the applicant on a number of occasions with amendments made to the proposed scheme. These amendments were:
- The originally proposed eastern development area of the site was omitted to enable retention of woodland habitat for the 3 pairs of Turtle Doves. A revised layout has been provided that identifies that Woodland W1 and adjacent land is now fully retained. This will minimise loss of existing nesting habitat within the site and provide the conditions for retaining 3 breeding pairs of Turtle Doves on site.
 - The existing Woodland (W4) to the southeast of the site is now retained as existing, instead of being reduced in size.
 - Existing habitats that do not form the development parcels are to be retained and enhanced on site.
- 2.14 During the 25th February planning committee it was discussed and requested that a group of trees (referred to as G29) should be retained. This was discussed with the applicants, who have stated that this group of trees are all young, Category C trees, as set out in the Arboricultural report and it is not intended at this stage to retain these trees due to the impact this would have on the proposed development parcels, that form the main areas for development. In addition, existing trees and woodland to the west, south and east are being retained and enhanced.

Compensation and Mitigation

- 2.15 The key test for decision makers is set out in paragraph 175(a) of the NPPF - can biodiversity harm be adequately mitigated, or can it be compensated for? As far as practical land that is not proposed for development will be identified for the mitigation of on-site ecology harm and this is to be controlled through planning conditions to be set out later in the report. However, the nature and scale of ecology and biodiversity present on the application site requires compensation off-site and, in particular, on Betteshanger Country Park (BCP) site that is also owned by the applicant. By providing mitigation and compensation in an appropriately controlled scheme the requirements of paragraph 175(a) can, in officer's opinions, be satisfied.
- 2.16 This aspect of the proposal has been the subject of continued discussions with the applicant since the 25th February Planning Committee. The previous mitigation and compensation provided an outline scheme, for confirmation at a later date, to partly include a piece of land on Betteshanger Country Park (BCP). This land, however, contained the Schedule 8 protected Lizard Orchid and so the potential for the use of another unspecified site was identified through The Environment Bank. An outline strategy was provided but was lacking in any detail or clarity of the approach to be undertaken. This was to be controlled through planning conditions and the s106 legal agreement. However, the lack of detail and clarity of approach did not provide confidence that an appropriate mitigation and compensation scheme could be provided, although there was clearly the availability of sufficient land on BCP to achieve this in principle.
- 2.17 The revised approach set out in the Ecology Technical Note dated 26th March 2021 is now being proposed, however further updates and amendment of some of the wording has been discussed and agreed with the applicant to address some of the ongoing concerns, in particular, as identified by DDC's Snr. Environment Officer.
- 2.18 It is still proposed to deal with the ecology matters through planning conditions and the s106 agreement, however the terms of the s106 and planning conditions are more robust, providing the detail and clarity that was previously not available. Updated surveys of BCP have not been provided yet to fully inform the approach, but this has been accounted for within the terms of the s106 and the more detailed planning conditions. The proposed terms of the s106 to address the compensation on BCP are set out below:

To submit a Biodiversity Offsetting Scheme prior to submission of a Reserved Matters application for the approval of the LPA/DDC. This will include the following:

- *In excess of 4.68ha of open mosaic habitat creation;*
- *Turtle Dove habitat enhancement measures;*
- *To include measures to mitigate, provide suitable habitat and ongoing protection of all invertebrates and plant species found on the application site (including Grass Poly and Penny Royal)*
- *Provision of biodiversity impact calculations using the Defra metric to demonstrate an overall net gain under the proposed development (i.e. in excess of no net loss);*
- *An ecological management plan covering the above measures for a period of at least 30 years from the date of implementation;*

- *The ecological surveys and feasibility works to determine and inform such a scheme including a qualitative and quantitative assessment of all land on BCP and Turtle Dove species survey;*
- *Measures to protect the land/sites forming these works and ongoing protection;*
- *The timetable for the delivery of the scheme; and*
- *Provision for the funding of any organisation appointed to monitor and manage the ecological management plan.*

To fully implement the Biodiversity Offsetting Scheme as approved by the Council (or any such revisions to such Scheme as approved by the Council).

In the event that any of the above measures are to be delivered within an alternative site to Betteshanger Country Park, this would be subject to the approval of the Council and reasonable endeavours would be used such that an alternative site is located within the District of Dover.

- 2.19 The planning obligations contained in the s106 legal agreement require the submission and approval of an offsite habitat compensation strategy to offset loss of OMH and the impacts on Turtle Doves, other protected species and flora to ensure a biodiversity net gain under the proposals. This will require that details of the new habitat creation and species translocations and ongoing management and monitoring are undertaken. This package of obligations is considered to satisfy the requirement under paragraph 175(a) of the NPPF to mitigate and compensate for any biodiversity loss on the development site.
- 2.20 The Ecology Technical Note also includes a plan showing a number of different land parcels on BCP. It includes the land previously identified that contains Lizard Orchids, along with new areas of other land identified by the DDC Snr Env. Officer in her consideration of the best available site on BCP. In addition, other smaller parcels of land have been identified. On further discussion of this plan and the sites identified with the applicants, it was stated by the applicants that this plan shows the availability of options on BCP and that other parts of BCP, following a full ecological survey of the park, could be identified as more suitable. The totality of the areas of land involved in the BCP is considerable and well over twice the total land area to be lost on the application site. Some of it, whilst being suitable in ecological terms, is not the applicant's first choice as it is being actively used as part of the BCP offer. However, they accept that if other areas within the BCP are found to be unsuitable then this land may need to be included in the compensatory strategy. The land to be lost to OMH on the application site is 4.68 hectares. This is in several parcels. Ideally it would be replaced with a single area in the BCP. This is to ensure its ecological interest is maximised through avoiding what is known as "edge effect" where the margins have reduced value due to the impact of adjoining land uses. Again, this can be agreed post decision. It is unlikely to be a straight swap in terms of overall land area as the area needed can only be determined through use of the Defra Metric which gives a unitised value that can then be translated into area. In addition, the applicants have agreed to biodiversity net gain as being best practice albeit not yet enshrined in law (it should be noted that paragraph 170(d) of the NPPF does require that net biodiversity should be provided for but does not set a percentage gain that must be achieved). Again, this is covered in the s106 terms set out above. The Lizard Orchid area (Area 2 on the plan) that was considered unacceptable may be able to be partially used once a full ecological survey of the whole of BCP is undertaken and

therefore it has been retained at this stage. This plan is not the approved and final location of the compensation sites but sets out the availability of options to address the need to provide suitable and adequate compensation land to address the range of ecological considerations and the determinative requirements of paragraph 175(a). It is noted that securing off-site mitigation and compensation which is appropriately maintained for at least 30 years has been supported by Inspectors at appeal (APP/J4423/W/20/32585555).

- 2.21 The terms of a completed s106 are legally binding (and potentially enforceable by injunction) and are the most appropriate means of securing off-site works of any type. This is normally required for an affordable housing scheme, (including this site) or larger off-site highway works. Securing off-site ecological measures through the terms of a s106 is the most appropriate mechanism to secure off-site compensation, particularly in relation to an outline planning application.
- 2.22 This legal agreement does not contain the entirety of the mechanisms that are intended to be used to control the development and make it acceptable in planning terms. A number of detailed and specific planning conditions to suitably control the development and ensure appropriate measures are undertaken and fulfilled on site will also be imposed. The NPPF states at paragraph 54 that LPA's "should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations." A summary of the updated full list of conditions is set out at the end of this report and already included a number of conditions set out in the Ecology Technical Note to address the ecology issues. However, for clarity the following ecology conditions are proposed. These are amended and updated accordingly following an assessment of the wording put forward by the applicants (and can be further amended if required). These set out the level of detail being required under these conditions.

Construction environmental management plan

No development shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following:

- a) Risk assessment of potentially damaging construction activities.*
- b) Identification of "biodiversity protection zones".*
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).*
- d) The location and timing of sensitive works to avoid harm to biodiversity features.*
- e) The times during construction when specialist ecologists need to be present on site to oversee works.*
- f) Responsible persons and lines of communication.*
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.*
- h) Use of protective fences, exclusion barriers and warning signs.*

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

Landscape and ecological management plan

A landscape and ecological management plan (LEMP) shall be submitted to, and be approved in writing by, the local planning authority prior to the commencement of the development [or specified phase of development]. The content of the LEMP shall include the following:

- a) Description and evaluation of features to be managed.*
- b) Ecological trends and constraints on site that might influence management.*
- c) Aims and objectives of management.*
- d) Appropriate management options for achieving aims and objectives.*
- e) Prescriptions for management actions.*
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period)*
- g) Measures to protect the land/sites forming these works and ongoing protection measures;*
- h) Details of the body or organization responsible for implementation of the plan.*
- i) Ongoing monitoring and remedial measures.*

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

Grass-poly translocation strategy

Prior to the submission of reserved matters a strategy addressing translocation of Grass-poly shall be submitted to and approved in writing by the local planning authority. The strategy shall include the following:

- a) Purpose and conservation objectives for the proposed works.*
- b) Detailed working method(s) to achieve stated objectives.*
- c) Details of creation of proposed onsite receptor areas.*
- d) Extent and location/area of proposed source and receptor areas on appropriate scale maps and plans.*
- e) Timetable for implementation demonstrating that works are aligned with the proposed phasing of development.*
- f) Persons responsible for implementing the works.*
- g) Details of initial aftercare and long-term maintenance.*
- h) Measures to protect the land/sites forming these works and ongoing protection measures;*
- i) Details for monitoring and remedial measures.*
- j) Details for interpretation and boundary treatment of receptor areas.*

The strategy shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.

- 2.23 It has therefore been demonstrated that a robust approach to deal with the significant ecology considerations raised by this site and application can be

suitably addressed by the proposed s106 terms and the suggested planning conditions. This includes a replacement of OMH and a net gain in biodiversity on BCP, however, final details will be resolved through the proposed s106 and the suggested planning conditions.

2.24 The debate regarding the loss of OMH on site and whether it can be fully replicated off-site, the protection of flora and invertebrates identified on the site and the protection of bird species, in particular Turtle Doves and their foraging areas, remains relevant. Furthermore, there is also a concern as to whether a biodiversity net gain is being provided off-site, 10%, and therefore whether a sufficient level of biodiversity net gain can be achieved. The applicants have agreed to provide in excess of the replacement 4.68 hectares of OHM to be lost, however, they have advised that they cannot commit, at this stage, to a fixed 10% biodiversity net gain in the s106. Their reasoning is that BCP needs to have a full ecological survey undertaken to progress the compensation and mitigation proposals through the s106 and until this process is complete the commitment to a 10% biodiversity gain cannot be agreed. Nevertheless, the terms of the s106 have been amended to enable a net gain uplift to be determining through this process. Secondly, it is also of note that the 10% requirement for biodiversity net gain and the use of the biodiversity metric has still not be confirmed by government in legislation, with The Environment Bill still awaiting debate in Parliament. Its significance is widely known and some of its measures are already being used in practice, nevertheless, it does not currently form government policy or law. Consequently, DDC cannot insist that a 10% biodiversity net gain is provided at this stage, even though the applicants are aware that this is and will continue to be the expectation moving forward. The wording of the proposed s106 terms still enables a 10% biodiversity net gain to be secured through those ongoing negotiations, with this position made clear throughout. It is therefore concluded that there is sufficient certainty that an appropriate solution can be implemented in respect of the complex ecology considerations and the application can be determined on this basis, as the proposal is now considered to comply with paragraph 175(a) of the NPPF, i.e. providing an appropriate mitigation and a compensation scheme.

2.25 The following table identifies the species-specific and ecology concerns that were identified in the previous committee report and identifies the mitigation and compensation measures now being put forward under this application. It is therefore an update to the previous table for clarity.

Species/Habitat/ DDC issues	Mitigation and/or Compensation Proposed by applicants	LPA comments
<p><u>Turtle Doves</u> 4 pairs of breeding - priority species - 3 breeding pairs & core territory area associated with the 3 pairs within the eastern part of the site is retained.</p> <p>4th breeding pair, tree used for nesting to be removed and lost</p>	<p>Compensatory habitat to be provided within BCP. Habitat areas of plus supplementary feeding is proposed to compensate for loss of one territory and impacts on other pairs. Mitigation will be secured by S106, to be</p>	<p>The proposed s106 terms require a detailed mitigation scheme with timescales and the need to appoint a suitable body to oversee the works.</p> <p>The s106 requires up to date evidence/survey of BCP to establish baseline and inform strategy.</p>

<p>How is loss of foraging area on development platforms to be addressed, how ensure retained on site or relocated to BCP</p>	<p>informed by further survey work and approved in consultation with the RSPB, inc. monitoring, with the intention that this is overseen by the RSPB/KWT</p>	<p>Breeds pairs on site and land controlled through robust planning conditions.</p> <p>Protection, mitigation, and compensation measures to be provided under the s106</p>
<p>Invertebrates - An endangered <u>spider</u> (nationally rare and near threatened) and a rare <u>ground bug</u> - The main areas of bare and recolonising ground forming the development platforms are considered to be of value for invertebrate species associated with open vegetation, with a number of species of conservation interest recorded.</p>	<p>The S106 will secure delivery of OMH provision to achieve a net gain in biodiversity, ensuring appropriate compensation. New habitat opportunities will be provided, allowing for colonisation by invertebrate species. This will be assisted by translocation of substrate and vegetation turves from the site to new OMH areas.</p>	<p>The proposed s106 terms require a detailed mitigation scheme with timescales and the need to appoint a suitable body to oversee the works.</p> <p>Protection, mitigation and compensation measures to be provided via the s106.</p> <p>Protection to be secured via ongoing management and monitoring of areas of highest diversity for invertebrates retained on site and controlled through conditions</p>
<p><u>Grass-poly</u> – nationally rare, a priority species and protected under Schedule 8 of the WCA 1981 Located on development platforms</p>	<p>Translocation over 2 seasons to onsite receptor areas (with additional offsite receptor to also be investigated).</p> <p>Seed collection would allow for planting of species in subsequent years if initial translocation unsuccessful</p>	<p>Translocation to continue until established off-site and on-site. Off-site receptor needs to be identified and set out in the scheme to be submitted under the s106 and planning condition.</p> <p>The proposed s106 terms require a detailed mitigation scheme with timescales and the need to appoint a suitable body to oversee the works.</p> <p>Protection, mitigation and compensation measures to be provided through s106 and conditions.</p>
<p><u>Lizard Orchids</u> - nationally rare, a priority species and protected under Schedule 8 of the WCA 1981 Identified on Betteshanger Country Park (BCP) compensation area</p>	<p>The BCP proposals seek to maintain suitable habitat conditions for Lizard Orchid, and management activities informed by an ecological survey of BCP which can identify Lizard Orchid locations so these can be</p>	<p>BCP– how will these measures ensure protection?</p> <p>The s106 requires up to date ecological survey of BCP to establish baseline and inform compensation and mitigation strategy. The compensation works will be fully informed by an appropriate body, overseeing all works.</p>

	avoided. Protection to be secured via a scheme, ongoing management and monitoring of new OMH areas under the S106.	
<u>Pennyroyal</u> - nationally rare, a priority species and protected under Schedule 8 of the WCA 1981	Recorded locations of Pennyroyal lie outside of proposed works areas (including enlargement of existing drainage ponds) such that it would not be impacted directly by the development proposals. Onsite management will seek to maintain existing habitat for this species.	Ecological management plan condition requires details of protection and management to ensure not impacted as a result of any on-site works. Translocation could also be considered, as per Grass-Poly to increase biodiversity. Referred to in mitigation scheme.
<u>Expert assistance in ecology matters</u> Inclusion of a recognised ecological body to oversee and manage the ecological aspects of the proposal on and off-site including compensation scheme	During consultation discussions, both KWT and RSPB have indicated a willingness to be involved with ongoing management and monitoring of compensatory habitat if the scheme were to be consented. The mitigation scheme to be secured under S106 and agreed with the LPA and relevant consultees will detail ongoing management and monitoring arrangements, allowing for the land to be handed over to a recognised ecological body, or for works to be overseen by such a body through an agreed monitoring programme.	The s106 and planning conditions ensure mitigation, compensation, management plans and monitoring, allow a sufficient degree of certainty that this can be secured.

2.26 The suitability of part of the identified compensatory area (Area 2) of OMH has been questioned, throughout the consideration of this application. However, it is important to note that, in the absence of active management this is being

impacted by natural succession and over time will be colonised with different species and the OMH will be lost. OMH is defined by early successional plants that colonise bare (often remediated ground), which is partly why it is a priority habitat, as sites become colonised by other plants or developed over time. The application site and OMH at BCP will therefore be lost over time and neither is currently the subject of a management plan. Its long term management and protection is therefore capable of qualitative ecological enhancement in the long term, through the implementation of an active management plan. As such, the securing of a management plan for existing areas of OMH within the Country Park is also a significant benefit being put forward by the applicant that should be given significant weight in decision-making and as a valuable component of the mitigation and compensation strategy being proposed.

- 2.27 The conclusions are that the approach and biodiversity net gain delivered is consistent with NPPF policy and addresses the ecology objections raised sufficiently to enable a decision to be issued for the proposal. The applicants have now provided the level of clarity and certainty at this stage for Officers to confirm that ecology matters, as set out above, can be satisfactorily addressed, or have sufficiently demonstrated that the legislative requirements can be fully addressed. DDC's Snr Natural Environment Officer has clearly set out the concerns regarding the measures identified and any unresolved matters need to be addressed to an acceptable level through the s106 submissions and condition discharges (in consultation with the Environment Officer and statutory bodies) to provide sufficient certainty that the harm to ecology and biodiversity has been suitably mitigated or compensated. This approach accords with the NPPF and paragraph 175(a) of the NPPF, being the key determinative issue for decision makers.

Development Contributions, Summary and Update

- 2.28 The applicant has agreed in principle the Heads of Terms in relation to these contributions, that are considered necessary to make the development acceptable in planning terms. The full range of contributions required by the development are therefore being met by this proposal. The Heads of Terms are:

- Primary Education – towards primary schools within Sandwich/Deal Planning Areas – total £747,362
- Secondary Education- towards expansion at Goodwin Academy £4540 per dwelling or £730,940 in total
- Library - contribution towards Deal library services and bookstock of £11,644.50
- Social Care – contribution of £30,844.80 towards specialist care accommodation in the district
- Youth Service – contribution of £13,755 towards additional resources for Deal Youth Service
- Community Learning – contribution of £3,448.20 towards resources at Deal Adult Education Centre
- Thanet and Sandwich Coast Management Strategy - A total of £12,381.39 is required as a contribution towards mitigation strategy
- Off-site public open space – transfer of land for outdoor sports facilities at Betteshanger Social Club
- Playing Pitch Provision – contribution of £94,196.96 towards additional pitch provision

- NHS CCG - contribution towards General Practice in the Deal and Sandwich area of £181,440
 - Monitoring per trigger event of £236 per event
 - Payment of all associated legal costs.
- 2.29 The above is in addition to other terms set out in the draft s106 that includes affordable housing and the ecological terms set out in paragraph 2.17 of this report.
- 2.30 In addition to the above, the applicant has included and offered within the s106 a one-off contribution of £750,000 towards the completion of the Visitor Centre at Betteshanger County Park. This payment is to be made prior to occupation of the proposed development. This payment has not been the subject of any planning justification/case or viability report submitted to support the proposed application. The link between this payment and the two developments is not set out in a separate report or the draft s106. On seeking clarification of this payment with the applicant it is advised that this forms part of the socio-economic case for the development, as set out in the previous report. This one-off payment has not been considered as a separate material consideration to weigh in the balance in the determination of this application or report to planning committee as it is not considered to comply with CIL Regulation 122(2)(a) or (b) as it is neither necessary to make the development acceptable in planning terms nor directly related to the proposed development.

3. The Planning Balance and Conclusions

- 3.1 The planning case for the development proposal is set out in detail within the previous committee report (attached) and this updated report and is considered to be persuasive, save for the concerns which remain in relation to the ecological issues identified in the report. It is considered that these ecology concerns can be addressed by the submission of detailed mitigation and compensation proposals which address DDC's Natural Environment Officer's concerns, through the proposed conditions and the terms of the s106 (as set out above).
- 3.2 In terms of the principle of development on this site, it has been demonstrated that the development accords with the objectives of the Development Plan and the NPPF, taken as a whole. The report sets out that residential development of this site is sustainable and in line with established policy objectives. The site has been identified for housing in the draft local plan and is found to be acceptable in terms of highway, drainage, landscape impact, layout, density, climate change considerations and the provision of affordable housing. Accordingly, it is appropriate to weigh up the significant economic, social and overall environmental benefits that do not result in demonstrable harm of the proposal against any negative effects and conclude that the development is sustainable and should be granted planning permission, in accordance with the approach identified in the NPPF.
- 3.3 The case for the economic, social and environmental objectives of sustainability set out in paragraph 8 of the NPPF has been made in the sustainability section of the previous committee report including a range of sustainable and environmentally friendly features, concluding that as a whole the proposal is a sustainable form of development with many benefits. Consequently, the proposal has been found to be acceptable in all other

material considerations. It is therefore an acceptable and sustainable site for residential development and it is recommended that Members approve the proposal as it meets the overarching objectives of the Core Strategy and the framework in the NPPF as whole. The NPPF provides clear policy support for the proposals, the 'tilted balance' applies and in accordance with Paragraph 11 (d) planning permission should be granted for the development "unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole".

- 3.4 When weighing up the benefits of the development identified in the report, although there is a significant amount of local objection to the proposed development the identified harm (subject to the resolution of ecology) that would significantly and demonstrably outweigh the benefits of providing additional housing on this site that is not countryside but a partially developed site within the district, including the provision of 30% affordable housing, employment floorspace and community benefits, including the wide range of development contributions towards local infrastructure set out above, that have all been agreed in principle.
- 3.5 Additionally, the applicants have also identified their position in terms of the development being sustainable and the under delivery of housing sites. As referred to above, the Council has a 5-year supply of housing that can be delivered, however, there is also a need to provide additional housing sites in the Local Plan Review (Reg 18). It is therefore appropriate to approve in principle residential development on this site. A more in-depth discussion of the Council's housing land position and its deliverability is not, therefore, required at this stage. The proposed development of up to 210 dwellings will be a substantial contribution to the availability of housing within the district and will contribute towards the 569 units per annum now required under the methodology for housing need.
- 3.6 The proposal represents a commitment to delivering a positive outcome for the site and the surrounding area, balanced across a wide range of considerations. All material considerations have now been dealt with satisfactorily and are in line with the development plan and NPPF Framework taken as a whole and can be controlled through the suggested conditions and s106. The principle of development is therefore accepted.
- 3.7 On this basis, it is recommended that Members grant the permission sought by this application, having been minded to approve the scheme on the 25th February Planning Committee in principle, and following the further consideration of the significant ecological issues that are raised by this application. Notwithstanding that the form of this anticipated work has shifted since the initial report to planning committee, officers are now satisfied that each ecological challenge posed by the application can be adequately overcome in line with guidance and legislation and in particular paragraph 175(a) of the NPPF. Officers are satisfied that all material considerations have been addressed, including ecology and respectfully request that Members approve this application for outline planning permission.

g) Recommendation

- I The Planning Committee resolves to GRANT OUTLINE PLANNING PERMISSION subject to the completion of a Section 106 legal agreement to

secure the necessary contributions and ecological mitigation and compensation measures as set out above and subject to the following conditions to include:

- 1) Reserved matters details
- 2) Outline time limit
- 3) Approved plans
- 4) Phasing plan to be approved in writing
- 5) Self-build design code to be agreed as part of RM
- 6) Details of play space to form part of RM
- 7) Existing and proposed site levels and building heights
- 8) Internal acoustic requirements for dwellings
- 9) Construction Management Plan (updated to inc. E/H matters such as dust mitigation etc)
- 10) Highway conditions (parking, visibility splays, highway works fully implemented, turning facilities, cycle parking, gradient, surface, works to all footpaths and drainage, bond surface, surface water)
- 11) Sustainable Travel Plan to be agreed prior to commencement
- 12) Completion of the A258 Sandwich Road bus stop scheme prior to first occupation
- 13) PROW upgrades and management scheme
- 14) Completion of off-site improvements to Mongeham Road prior to commencement and subject to a safety audit process
- 15) Provision and maintenance of a pedestrian connection to Circular Road
- 16) Full Landscaping Details all green spaces
- 17) Open space management plan
- 18) Details of children's play spaces
- 19) Protection of Trees and Hedges and root protection zones
- 20) Hard landscaping works and boundary details/enclosures
- 21) No works on site until final SuDS details are submitted
- 22) Design details of surface Water drainage strategy
- 23) Implementation and verification of SuDS scheme
- 24) No other infiltration on site other than that approved
- 25) Full foul drainage strategy for approval
- 26) Environmental Construction Management Plan (as set out in report)
- 27) Programme of archaeological works
- 28) Details to be submitted at RM for compliance with Secured by Design principles
- 29) EVC points for each dwelling & 10% unallocated & employment parking spaces
- 30) Broadband connection
- 31) 4 Stage contamination, remediation, and verification conditions
- 32) Reporting of unexpected land contamination
- 33) 3 conditions recommended by The Coal Authority
- 34) Update survey to be carried out for Badgers prior to commencement
- 35) Landscape and ecological mitigation plan setting out safeguards for retained habitats on site (as set out in report)
- 36) Grass-Poly translocation strategy (as set out in report)
- 37) Management plan for new habitat creation, to include details of green roof/brownfield habitat provision
- 38) Design of a sensitive lighting strategy in relation to bats and other nocturnal species (in line with established guidance)

- 39) Implementation of a habitat manipulation exercise in relation to reptiles
- 40) Works affecting nesting bird habitat to be undertaken outside of the nesting bird season, or following nesting bird checks
- 41) Sustainable energy measures to be approved in accordance with the approved Energy Statement and Sustainability Assessment
- 42) BREEAM very good criteria for commercial buildings
- 43) Floor levels 150mm above ground level

- II Powers to be delegated to the Head of Planning, Regeneration and Development to settle any necessary planning conditions in line with the issues set out in the recommendation and as resolved by the Planning Committee.

Case Officer

Lucinda Roach