

Our ref: P21-196 Penistone

Your ref: 2020/0274 Halifax Road, Penistone

12 May 2021

Paul Butler - Director  
Paul Butler Planning  
PO Box 778, York, YO1 0LT  
by email only

Dear Paul

**Re: 2020/0274 Halifax Road, Penistone - Ecology**

Further to a meeting held on 7 May between Paul Butler (PB Planning) and Barnsley Metropolitan Borough Council (BMBC), please see the following response to a request made by BMBC to provide information relating to biodiversity gain. Specifically, the Council's query relates to the ability for Barratts David Wilson Homes (BDW) to pay a contribution (secured via Section 106 Agreement) to off-set any residual effects on biodiversity.

We provide below an explanation of the process that has been followed to get to this point.

The current national and local planning policy context has been taken into account as part of the approach for biodiversity gain for this development. The BMBC Local Plan (Adopted January 2019) sets out in **Policy BIO1 Biodiversity and Geodiversity** that:

*Development will be expected to conserve and enhance the biodiversity and geological features of the borough by:*

- *Protecting and improving habitats, species, sites of ecological value and sites of geological value with particular regard to designated wildlife and geological sites of international, national and local significance, ancient woodland and species and habitats of principal importance identified via Section 41 of the Natural Environment & Rural Communities Act 2006 (for list of the species and habitats of principal importance) and in the Barnsley Biodiversity Action Plan.*
- *Maximising biodiversity and geodiversity opportunities in and around new developments.*
- *Conserving and enhancing the form, local character and distinctiveness of the boroughs natural assets such as the river corridors of the Don, the Dearne and Dove as natural floodplains and important strategic wildlife corridors.*
- *Proposals will be expected to have followed the national mitigation hierarchy (avoid, mitigate, compensate) which is used to evaluate the impacts of a development on biodiversity interest.*
- *Protecting ancient and veteran trees where identified.*
- *Encouraging provision of biodiversity enhancements.*

*Development which may harm a biodiversity or geological feature or habitat, including ancient woodland and aged or veteran trees found outside ancient woodland, will not be permitted unless effective mitigation and/or compensatory measures can be ensured.*

*Development which adversely effects a European Site will not be permitted unless there is no alternative option and there are imperative reasons of overriding public interest (IROPI).*

There is no biodiversity gain or biodiversity net gain policy reference in the adopted Local Plan hence, for this development, Policy BIO1 is relevant. In relation to biodiversity gain, reliance is therefore placed

on the NPPF<sup>1</sup>. The current biodiversity gain policy requirements in the [NPPF](#) (February 2019) are provided as follows. In paragraph 170d) planning policies and decisions *should* provide net gains for biodiversity. At paragraph 174b plans are required to *'identify and pursue opportunities for securing measurable net gains for biodiversity.'* Paragraph 175d introduces the principle of measuring biodiversity gain in relation to developments, stating: *'...opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.'*

For this development, the policy provision in Policy BIO 1 relating to the application of the mitigation hierarchy (also stated in the National Planning Policy Framework<sup>2</sup>) is the most relevant. This has been duly applied for this development.

Natural England Guidance on the Natural Environment<sup>3</sup> provides context for the relationship between biodiversity gain and the mitigation hierarchy as follows *'Biodiversity net gain complements and works with the biodiversity mitigation hierarchy set out in NPPF paragraph 175a. It does not override the protection for designated sites, protected or priority species and irreplaceable or priority habitats set out in the NPPF. Local planning authorities need to ensure that habitat improvement will be a genuine additional benefit, and go further than measures already required to implement a compensation strategy.'*

With reference to the above national and local policy and guidance, I have taken each item of the mitigation hierarchy in turn to provide a rationale of the approach taken to biodiversity conservation for the Penistone development:

1. Avoidance – On the whole, harm to biodiversity has been avoided at the site selection stage. This is demonstrated by the housing allocation (Site HS75) in the Barnsley MBC Local Plan. This is a site that occupies large agriculturally improved rye-grass fields, bounded by drystone walls and species-poor defunct hedgerows. The DEFRA Biodiversity Metric<sup>4</sup> recognises the habitat across the fields as being of 'Low' distinctiveness, an attribute attached to habitats of low biodiversity value.
2. Mitigation – One mature ash tree is present along the field boundary to the south-west corner of the site. The Brooks Ecological Report<sup>5</sup> identifies this tree as being *'likely to qualify as an early ancient tree or fully mature transitional veteran.'* A suitable buffer will be provided to the tree which will be retained, therefore meaning that impacts on the tree would be minimised. All hedgerows will also be retained, and enhanced.
3. Compensation – Residual adverse effects are those that remain once avoidance and mitigation have been factored in; and it is these that would normally be compensated. In this context, residual adverse effects are those attributed to a negative score in the Biodiversity Metric in habitat unit terms. Compensation for the residual adverse effects may be dealt with in four ways: i) through on-site compensation; and/or ii) through off-site compensation on land within the developers control; and/or iii) through a financial contribution to the BMBC, secured via Section 106 Agreement; and/or iv) a combination of the above.

Regarding the first of these compensation options, in the south of the site, a range of habitats is being provided, including orchard and herb-rich grassland creation; both habitats of medium

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<sup>1</sup> Note that Supplementary Planning Document: Biodiversity and Geodiversity (BMBC, 2019) also refers to National Planning Policy Framework in Appendix D of the document.

<sup>2</sup> NPPF Para 175 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

<sup>3</sup> <https://www.gov.uk/guidance/natural-environment> (last updated 21 July, 2019)

<sup>4</sup> Defra (2019) The Biodiversity Metric 2.0 – Calculation Tool – Beta Test December 2019 Update, Department for Environment Food and Rural Affairs, London.

<sup>5</sup> Brooks Ecological (2021) *Ecological Impact Assessment Land South of Halifax Road, Penistone.*

distinctiveness. This, in part, compensates for losses of habitat associated with the development. Regarding the second option, BDW have contacted the landowner to understand what other land with their ownership could be brought forward for off-site compensation. Several areas were identified, however, during a site walkover on 5 May 2021, these areas were confirmed by BSG Ecology to all have existing biodiversity interest (habitats of medium distinctiveness), so would not be suitable for off-site compensation. Notwithstanding this, BDW are keen to identify, post-determination, if there are still suitable alternative parcels of land that can be put forward in a scheme of off-site compensation, and wish to keep this option open, via the Section 106 agreement, which would either wholly or partially remove the need to provide a financial contribution. Therefore, as a last resort, to compensate for the remaining residual loss of biodiversity (having factored in both i) and ii), BDW is seeking to make an (in part) off-site contribution to BMBC through option iii). Cumulatively, since all options will have been considered, it demonstrates that a careful thought process has been followed in arriving at this point (option iv)).

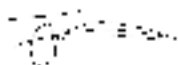
In considering whether an off-site contribution to BMBC might be an acceptable approach for this development, having exhausted all alternative options to make up the residual biodiversity loss in habitat units, it should also be noted that numerous local planning authorities in England are granting consent subject to condition and section 106 agreements that include a financial payment in relation to biodiversity gain. The monies are then used for specific sites/locations, the detail of which can be agreed post-consent. For example, Warwickshire County Council has been operating this model since the Defra Biodiversity Offsetting trials i.e., since 2012.

The outcome of recent case law in Milton Keynes<sup>6</sup> contains two relevant points to this development a) that the Inspector placed greater weight on the adopted Local Plan policy than forthcoming [draft Environment Bill] legislation which although 'a material consideration, it is not yet law' and b) it is considered that the principle of a payment to a local planning authority is acceptable where on-site biodiversity gain cannot be delivered, as the appeal refers to the financial contribution in principle and an amount is specified 'to make the development acceptable in planning terms.'

This letter confirms that the mitigation hierarchy has been applied and that, in the absence of suitable land within the control of the developer being available for habitat creation and/or enhancement or to compensate for the residual biodiversity losses, it is appropriate to seek an arrangement with BMBC for a financial contribution to the Council towards offsite delivery of net gain for biodiversity by the Council.

I hope that this provides an appropriate rationale behind the approach taken for biodiversity in relation to this development. In the meantime, if there is anything that BMBC wishes to discuss, I would be happy to liaise (email: [j.fairclough@bsg-ecology.com](mailto:j.fairclough@bsg-ecology.com) / Mob: 07809 086998).

Yours sincerely



Jim Fairclough

Principal Ecologist

For and on behalf of BSG Ecology

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<sup>6</sup> Planning Inspectorate Appeal Ref: APP/Y0435/W/20/3251121; Land at Brickhill Street, South Caldecotte, Milton Keynes MK17 9FE.