



Appeal Decision

Site visit made on 19 August 2025

by **L N Hughes BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 September 2025

Appeal Ref: APP/J0405/W/24/3353985

Bucks Construction Academy, Middle Blackgrove Farm, Berryfields, Waddesdon, Buckinghamshire HP22 4AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Terra Firma Pipeline Ltd against the decision of Buckinghamshire Council.
 - The application Ref is 22/02293/APP.
 - The development proposed is a mixed-use development (Sui Generis) comprising: scaffolding storage and distribution (B8 use); vehicle maintenance and repair workshop (B2 use); bucks training academy (F1 use); construction training centre; overnight accommodation (for trainees attending construction courses); staff and trainee rest room and café; associated offices and vehicle parking; and site security manager's accommodation.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form identifies the works as completed in October 2021. However, several elements as shown on the plans have not yet been implemented or are different, including the layout of the whole southern training area and 'undisturbed open area', the western car park layout, and the eastern row of car parking which at present allows access through into the southern portion via a gateway and vehicle track. For the avoidance of doubt, I have therefore determined the scheme based on the submitted plans.
3. The Council raised concerns about the validity of the appeal with regard to relevant timescales. I can confirm that the appeal was valid on receipt, albeit there was a substantial delay in informing the main parties of this.
4. Several ecological reports were submitted for the appeal which were previously unseen by the Council. However, it is very common to include additional reports at appeal stage to attempt to overcome the reasons for refusal. The Council and interested parties have had the opportunity to comment upon them in accordance with the usual appeal timescales. The reports do not evolve the main parameters of the scheme on which the Council made its decision, but provide further information on site constraints, and refinement of outline ecological provision within the site. As such, I find no conflict with paragraph 16.1 of the 'Procedural Guide: Planning Appeals – England'. The plans are in accordance with the substantive and procedural tests of the Holborn Studios Ltd judgement¹, with no parties being prejudiced in the interests of natural justice.

¹ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

5. The appeal also includes maintenance workshop plans which are slightly different to those on which the Council made its decision. However, as a minor amendment they do not materially change the proposal, having originally been requested by the Council to rectify a drafting error, and they appear to reflect the proposal as built. I have therefore accepted these and the associated updated site layout plan as the basis of my determination.
6. The appellant submitted their Final Comments in accordance with the required deadline. However, they subsequently sought to introduce additional evidence, including a legal opinion, aerial mapping, and slides from a presentation given by a Buckinghamshire Council officer. This evidence was explained as seeking to confirm a fallback position for the site.
7. Section 9.4.8 of the Procedural Guide identifies that sticking to the timetable is important for appeals to proceed quickly and fairly. If documents are received after the statutory time limits, normally they will be returned. Where there is a change in circumstances, the Inspector will consider accepting late documents. They will also only accept a late document if satisfied that, amongst other matters, it would be procedurally fair to all parties.
8. I sought further information as to the appellant's reasons for the late submission, and why my accepting it into the evidence would accord with the Procedural Guide. I concluded that it does not comprise exceptional circumstances. The presentation dates from October 2024 and so was available prior to the appeal submission, and the aerial mapping dates from March 2020, notwithstanding that the appellant only became aware of it after Final Comments stage. There are a variety of places from which historic aerial mapping could have been sourced for the appeal, if it had been deemed to be crucial. The late information did not include any legal documents for a fallback such as a Lawful Development Certificate.
9. Moreover, a fallback position not previously considered by any party could result in substantially different circumstances to those on which the application was assessed. Accepting this evidence would therefore also cause substantial delay due to the need to consult extensively with the Council and other interested parties, with a risk of prejudice. Overall therefore, I find this evidence to fail the substantive and procedural tests of the Holborn Studios Ltd judgement, and have not considered it as part of my determination. Furthermore, the implication of any enforcement action which the Council may or may not choose to take, lies outwith the matters determinative to my decision.

Main Issues

10. The main issues are:
 - the effect of the proposed development on the protected species of great crested newts;
 - whether the proposed development would provide sufficient biodiversity net gain;
 - the effect of the proposed development on the protected species of badgers; and
 - whether the proposed development would provide a sufficient hedgerow buffer.

Reasons

Great Crested Newts

11. Great crested newts (GCN) have been identified within the on-site pond. GCN are a European Protected Species afforded protection under Regulation 9(3) of the Conservation of Habitats and Species Regulations 2017 (as amended). This requires that the competent authority, in exercising any of its functions, must have regard to the requirements of the associated Directive so far as they may be affected by the exercise of those functions. This includes any proposal that might lead to the deterioration or destruction of the breeding sites and resting places of European Protected Species under Article 12(1).
12. The Courts² have established that planning permission should ordinarily be granted save only in cases where a proposed development would either be likely to offend Article 12(1) or unlikely to be licensed pursuant to the derogation powers. There remains the duty to have regard to the requirements of the Directive as set out in Regulation 9(1), but the judgement establishes that there is no need to carry out a detailed assessment as to whether there would be a breach of Article 12(1) or whether derogation from that article would be permitted and a licence granted. Nonetheless, I am still required to consider the likelihood of a licence for the proposed development, and adequate mitigation for any potential GCN harm.
13. A standard mitigation licence can only be issued after planning permission has been granted, and cannot be granted retrospectively. I have seen no consultation response from Natural England (NE) to suggest whether a licence would be likely forthcoming. The Council's Newt Officer objected to the proposal at application stage, and has not commented on the appeal evidence.
14. The Vale of Aylesbury Local Plan 2013-2033 (LP) Policy NE1 relates to Biodiversity and Geodiversity. NE1(e) prohibits development resulting in damage to or loss of the habitats of Priority Species, except in exceptional circumstances where the need for and benefits of the development significantly and demonstrably outweigh the harm it would cause to the site, and the loss can be mitigated and compensation provided to achieve a net gain. NE1(g) similarly identifies that when there is a reasonable likelihood of the presence of protected species or their habitats, development will not be permitted until it has been demonstrated that the proposed development will not result in adverse impacts on these species or their habitats. The only exception will be where the advantages of development to the protected site and the local community clearly outweigh the adverse impacts.
15. The appellant's Ecology Statement of Case (ESoC) presents results of a desk and field assessment for the on-site pond, the 5 ponds within 500m of the appeal site, and a further pond just outside of this zone. This included overnight surveys, and Habitat Suitability Index assessments. It suggests the ongoing use of the appeal site is unlikely to result in the killing or injury of GCN or habitat loss. This is in part because the surveys showed only a 'low' GCN population within Pond A, and within Pond E outside the site, implying no large population in the area.
16. However, the 4 closest off-site ponds lying within approximately 325m away from the centre point of the site were not subject to a count, with 3 of them unable to be physically surveyed at all. Pond E is the furthest away within the 500m radius zone.

² *Morge v Hampshire County Council* [2011] UKSC 2

- Furthermore, 8 GCN were identified within Pond A, only 3 less than the 11 which would bring the pond into a 'moderate' categorisation. As such, it is unclear why a more precautionary approach to population numbers was not taken overall.
17. Moreover, the ESoC focuses almost entirely on impacts from a 'works area' in the southern portion, affecting no more than 200sqm of compacted ground from digging and refilling a narrow trench approximately twice a month. It also justifies a lack of impact on GCN in the works area because of its separation from Pond A by a large expanse of building and hardstanding acting as a barrier. However, there is no consideration that the proposal is for the site as a whole, incorporating a large part of that intensified 'barrier', and subject to significantly more activity than one trench. This includes other heavy machinery movements and operations, general vehicle and foot traffic and disturbance, and overnight guests.
 18. Indeed, the ESoC Section 11 acknowledges that the most important terrestrial habitat for GCN is within 100m from a breeding pond. They are likely to be disturbed by any work that involves clearing land up to 500m around ponds, where it has been managed and maintained in such a way that it is likely to support them.
 19. GCN licence applications include tests that there must be no satisfactory alternative that would cause less harm to the species, and there must be no harm to its long-term conservation status. The appellant suggests support for the appeal proposal, because NE would find that leaving the development as built is a 'satisfactory alternative' for licencing purposes compared to removal of the buildings and hardstanding, which would likely result in disturbance and possible killing or injury. Nonetheless, in this context, complete removal is not the only alternative when considering the scheme as sought as a whole, such as an amended layout or GCN mitigation measures of any type.
 20. Overall, insufficient information has been provided on potential GCN impact to be able to properly assess whether any specific mitigation may be necessary, such as habitat enhancement or improvements. Mitigation could not be sought through the imposition of conditions, due to this lack of certainty that sufficient mitigation could be secured within the parameters of the scheme as sought. The mitigation hierarchy has not been followed, such that significant harm to the long-term conservation status of GCN cannot be ruled out. Based on the evidence before me I have strong reason to doubt that a GCN mitigation license would be issued, and I find that the proposal would offend Article 12(1). The proposal would also therefore conflict with the LP Policy NE1(e) and (g).

Biodiversity Net Gain

21. The proposal is not subject to a statutory 10% Biodiversity Net Gain (BNG) increase, but the LP Policy NE1(c) seeks a net gain in biodiversity, and specifies that these gains must be measurable in accordance with the Biodiversity Net Gain - Supplementary Planning Document. Policy NE1(d) further identifies the hierarchy of avoidance, mitigation, and compensation, which must be secured and maintained in perpetuity. The Framework paragraph 187(d) also requires proposals to contribute to and enhance the natural and local environment, by minimising impacts on and providing net gains for biodiversity.
22. The BNG Assessment submitted at application stage used a 2017 baseline. The parties have since agreed 2006 as the appropriate ecology baseline, being prior to

the 06/02/456/AP permission ('the 2006 scheme')³. The BNG appeal evidence thus uses the 'Proposed Landscaping Scheme' plan submitted to discharge the landscaping condition of the 2006 scheme⁴ to help establish this baseline, and assumes planting of its proposed hedgerow and trees. A BNG Report was included within the appellant's Ecology Statement of Case, albeit not titled specifically as such. I have therefore made my determination based on this revised evidence.

23. The Biodiversity Metric demonstrates a net gain. However, the plan titled 'Post Development as of August 2024' showing the BNG post-development habitat parcels does not align in several ways with the Outline Landscape and Ecological Management Plan (LEMP), particularly in respect of the hedgerows, trees, and the extent of the 'urban – vacant or derelict land/undisturbed open area'. Indeed, the latter is not identified at all on the Site Plan⁵, which instead identifies the whole of this southern area as 'elevated practice turning space with 3 no access ramps'. Furthermore, the trading rules are not satisfied in accordance with the BNG guidance and Buckinghamshire BNG SPD.
24. Nonetheless, alongside my own site visit observations, the LEMP indicates the site has sufficient available land area to be able to provide biodiversity enhancements in excess of that shown in the Metric. The appellant suggests that this would be addressed through the further habitat creation identified on the LEMP, being a new hedgerow adjacent to the car park, 36 new trees, and a larger area of 'undisturbed open area'. I thus have confidence that the required BNG could be demonstrated by a slightly revised Metric and BNG Report, secured via a condition to include a 30 year Habitat Management and Monitoring Plan. There would also be broader biodiversity enhancement features of bat and bird boxes, hibernacula, insect hotels, and hedgehog boxes.
25. I note the Council considers there is insufficient justification for the baseline habitat to be scored as Modified Grassland in 'poor' condition, rather than a precautionary 'good' score as per the Metric guidance. However, the evidence indicates that the southern portion of the site was a grassland field managed intensively for agricultural production. This includes from aerial mapping, and that this is the retained condition of adjacent fields, and that of the remnant of original grassland under the pylon. I therefore find this scoring to be appropriate.
26. Overall therefore, and subject to appropriate conditions to identify additional BNG enhancement and controls, sufficient BNG would be provided such that there would be no harm. The proposal would comply with the LP Policy NE1 in this regard.

Badgers

27. Killing or harming badgers, disturbing them in their setts, and damaging or destroying a sett are all offences under the Protection of Badgers Act 1992 (PBA). The December 2023 site survey for the initial Badger Scoping Survey identified a single badger sett entrance. Given the presence of this sett and the multiple large earth mounds which offer desirable sett opportunities, the Scoping Survey considered that the use of using heavy machinery and other operational activities could disturb badgers in their setts. It therefore recommended following a

³ Change of use of two agricultural buildings, one for B2 (industry), and one for B8 (storage), use of compound for open storage of scaffolding (retrospective in relation to the scaffolding element only) and construction of new vehicle access, approved September 2007.

⁴ Via discharge of conditions application reference 07/11630/DIS1.

⁵ 19-018/S/021 Rev F, July 2019

- precautionary working method of a 30m buffer, and potential longer term mitigation of secure fencing around the perimeter of the excavation area.
28. Further surveys in February and August 2024 identified increased badger activity, with additional sett holes indicating a subsidiary sett. In between the surveys, a wooden post and rail fence with wire mesh netting was erected alongside this area, which provides protection for the entrances. It is not identified on the Site Layout Plan, but is annotated on the LEMP within area 'H'. The Council refers to possible harm from the fence itself, due to its proximity potentially impacting on tunnels or foraging routes. However, if I were to allow the appeal then I could impose various conditions to seek further information on this fence, to determine whether it should be retained.
 29. The ESoC provides a slightly different interpretation of the proposal's potential impacts than the Scoping Survey. It identifies there would be no on-site disturbance which could have a detrimental effect on badgers, because the increase in the sett size indicates no adverse impact from the site's ongoing use. It also suggests that works in the training area are unlikely to disturb badgers because it only involves the use of machinery a few times per month, more than 70m away. This level of disturbance is much less than other regularly disturbed areas where badger setts are commonly located. The bunds around the edge of the site would be unaffected, and excavated trenches are filled in the same day.
 30. I would expect that a higher badger population would in turn increase the chances of a breach occurring. Moreover, there is very limited information before me about the frequency of heavy machinery use, and that this would not increase over time. I could not impose conditions to control this, because I have insufficient information before me to do so, and as such it would be unreasonable as it would likely affect the day to day operation of the facility. Therefore, there is little to stop heavy machinery use intensifying in the future, or the diversification of more intense types of machinery and training practices, which would in turn cause more likely disturbance from excavation, noise, and vibrations. Natural England advice⁶ sets out a range of actions to help developers to avoid committing offences, including avoiding or limiting disturbances such as loud noise or vibrations to areas well away from the sett.
 31. However, it is important to highlight that none of the plans identify the existing hardstanding access track running alongside the south eastern boundary by the badger sett, the post and rail fence along its western side, or the removed part of the internal hedgerow to accommodate a wooden gate. If I were to allow this appeal, the permission would therefore not also permit this track, fence, and gates. With the site layout implemented as indicated by the LEMP with an 'undisturbed open area' comprising the entirety of its south-eastern part, no machinery would be digging or travelling within approximately 50m of the badger sett.
 32. To ensure this whole area remains undisturbed to fulfil its required BNG function as identified above, it could be fenced off from the training area to its west. Although not shown on the plans, the appellant's evidence indicates such fencing as a possibility. This would therefore also provide protection from heavy machinery disturbance for the badgers. Furthermore, badger monitoring measures could be required by the imposition of a condition.

⁶ Badgers and Development, A Guide to Best Practice and Licensing, 2011

33. Overall, I therefore conclude that subject to the imposition of relevant and appropriate conditions relating to badger protection measures, the proposed development would cause no harm to badgers. It would comply with the LP Policy NE1 in this regard, and the PBA.

Hedgerow Buffer

34. The LP Policy NE8 identifies that development should seek to enhance and expand Aylesbury Vale's tree and woodland resource. Amongst other matters, the Policy identifies an aspiration to retain a 10m (with a minimum of 5m) natural buffer around retained and planted native hedgerows for the benefit of wildlife, incorporating a dark corridor with no lighting. The Council considers this is not demonstrated. I note the Ecology Officer consultation responses which indicate a 10m buffer is required, but Policy NE8 does reference a 5m minimum. There is no evidence before me to therefore indicate why a 5m buffer would not suffice.
35. The appellant considers that the existing boundary mounds planted with scrub provide the necessary hedgerow buffers to meet Policy NE8. I did not measure their widths during my site visit, but due to the size and nature of the site, there appears sufficient space to be able to provide a 5m buffer on all sides. This could be conditioned to provide more detail including a scaled plan, to ensure that if incorporating the existing bunds, in whole or in part, that this would benefit wildlife as required by Policy NE8.
36. Subject to the imposition of suitable conditions, I therefore find there would be no harm, and no conflict with the LP Policy NE8.

Other Matters

37. The submitted s106 legal Unilateral Undertaking contains a 'blue pencil' clause for if I were to conclude that any of the planning obligation should hold no weight. As I am dismissing the appeal overall, it is unnecessary to consider this matter further.

Planning Balance

38. The proposal would provide additional and necessary employment land as highlighted by the LP, and intensification and extension of existing premises. It would provide small-scale direct employment. Most importantly, it would help up-skill attendees to boost the local and national economy more broadly. This is supported by the Framework's economic objective.
39. The development is positioned well to expand into additional training areas based on demand and funding availability, such as the Government's recent launch of a construction skills package of funding including construction focused skills bootcamp places, and additional places on new construction Foundation Apprenticeships. The site is identified as being the only construction training facility in this part of the country, such that dismissing the appeal would accentuate the skills shortage through increasing the difficulty of obtaining necessary construction training in this part of the country. I give this significant weight in favour, as directed by the Framework paragraph 85 whereby significant weight should be placed on the need to support economic growth and productivity.
40. I find no certainty in the very limited evidence before me as to the fallback position for the buildings, layout, and use of the site should I dismiss this appeal. I have identified at various points above an unknown outcome for any potential future

enforcement matters for the site. I have already addressed potential 'satisfactory alternatives' in relation to the impact on GCN, and concluded that they do not give support to allowing this appeal.

41. Nonetheless, fallback positions are material considerations. To provide a robust planning balance and for the avoidance of doubt, I have therefore assumed that compared to any fallback, the grant of this planning permission with relevant conditions would allow the Council more control over the site's development and operational parameters. This includes matters such as the extent of private vehicle travel, biodiversity, and landscaping. At most, this control would be in comparison to the site's existing extent of buildings and operations. On this basis, I therefore give minor weight in favour to the existence and likelihood of possible fallbacks.
42. I give minor positive weight to the BNG and biodiversity benefits of the proposed scheme. This weight incorporates that some already existing and created habitats would be lost if the appeal were dismissed and the site returned to a field. Electric vehicle charging would also be introduced, which I give minor weight in favour.
43. The above benefits have to be considered against the potential harm. The proposed development has not demonstrated that there would be no deterioration or destruction of the breeding sites and resting places of the protected species of GCN. No specific GCN mitigation has been proposed. In recognition of the statutory framework protection for GCN, alongside the development plan conflict in this regard, I find this holds such significant weight that this would outweigh all the cumulative benefits.

Conclusion

44. In conclusion therefore, the proposed development would conflict with the development plan as a whole. With no other material considerations outweighing this conflict, for the reasons given above I conclude that the appeal is dismissed.

L N Hughes

INSPECTOR