



Appeal Decision

Hearing held on 22 October 2025

Site visit made on 21 October 2025

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2025

Appeal Ref: APP/P4605/W/25/3366377

Land at Rubery Lane, Tessall Lane, Hollymoor Way and Balaams Wood Drive, Rubery, Birmingham B31 5HF

- 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 Montague Land Partners against the decision of Birmingham City Council.
 - The application Ref is 2023/07614/PA.
 - The development proposed is Erection of 11 dwellings with associated open space, parking, and works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposed development was amended during the application. I have taken the description of development from the decision notice and appeal form as this correctly describes the scheme. I have taken the address in the banner heading above from the decision notice as this more precisely describes the location of the site.
3. It became apparent since the appeal was lodged that part of the land within the site boundary was unregistered land. The appellant took steps including completion of ownership certificate C and by publishing in the local newspaper a notice under Article 13 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 of an application for planning permission. I am satisfied that the necessary notifications have been completed.
4. The Council published the Birmingham Local Plan Focused Preferred Options Consultation for public consultation on 23 October 2025. The parties have been given the opportunity to provide comments on this and I have taken these into account in my decision.
5. At the Hearing, the need for a legal agreement under section 106 of the Town and Country Planning Act 1990 (as amended) (s106 agreement) was discussed in respect of securing compensation for the loss of biodiversity. The parties agreed this required a change from the submitted unilateral undertaking under section 106. I gave the parties time to complete this following the event. I return to this later in my decision.

Main Issue

6. The main issue is the effect of the proposal on biodiversity, with specific regard to Priority Habitat (woodland).

Reasons

7. The site is undeveloped and heavily vegetated with a mix of trees and shrubs. It was somewhat overgrown at the time of my site visit, although some clearance had been undertaken to enable site access. Trees and hedges enclose the site. The western boundary of the site is adjacent to a designated wildlife corridor which forms part of the Balaams Wood Local Nature Reserve. The River Rea runs through the south and west of the site and the Rea Valley Site of Local Importance for Nature Conservation lies to the south and spreads into the north-westward area of the site. The site itself lies inside the Rea Valley Potential Site of Importance. It is undisputed that the site has ecological value.
8. According to DEFRA's MAGIC dataset, the western part of the site comprises a Priority habitat, that is a Habitat of Principal Importance included in the England Biodiversity List published under section 41 of the Natural Environment and Rural Communities Act 2006. It is identified within the UK Habitat Classification (UKHab) as 'lowland mixed deciduous woodland' on the Priority Habitat Inventory.
9. A Preliminary Ecological Appraisal¹ (PEA) of the site was undertaken in February 2022 by Midland Ecology. This determined that the site consisted of woodland and scattered scrub and this is mapped on the Phase 1 Habitat Map appended to the report. This shows a relatively narrow section of woodland along the west of the site with more substantial areas of woodland to the north and south.
10. In June 2024, a further PEA and Ecological Impact Assessment Report (EcIA)² was undertaken by Red Kite Network Limited based on a survey in May 2024. Vegetation was classified and mapped using the UKHab system. The field survey found that the Priority Habitat woodland occurred along the River Rea, in the south of the site as well as along the western site boundary. This was shown on the Baseline Habitat Plan appended to the report. Notwithstanding the 'wet woodland' classification in the Red Kite PEA, the parties confirmed at the Hearing that the Priority Habitat is 'lowland mixed deciduous woodland'. This also aligns with the MAGIC designation.
11. The Red Kite PEA provides a more detailed assessment of the habitats on site. It identifies that much of the area designated as Priority Habitat woodland is no longer woodland, which the UKHab defines as land with more than 25% cover of trees more than 5 metres in height. From my own observations on site, given the extent of tree coverage within this part of the site and the height of the saplings, I agree that much of the area would not fall within the category of woodland. The PEA also identifies the presence of semi-natural woodland indicators including wild garlic and pendulous sedge extending beyond where trees are no longer present. If left, in time the woodland would colonise this area but it is currently more akin to mixed scrub.
12. The Red Kite PEA nevertheless indicates that Priority Habitat covers just over 1,800 square metres based on its field assessment. It goes on to recommend that

¹ Midland Ecology, Preliminary Ecological Appraisal, Feb 2022

² Red Kite Network Limited, Preliminary Ecological Appraisal and Ecological Impact Assessment Report, 27 June 2024

all woodland within the lowland deciduous woodland Priority Habitat should be retained in its entirety to safeguard the important vegetated riparian corridor including instances of potentially native bluebell.

13. Policy TP8 of the Birmingham Development Plan 2017 (the BDP) sets out that development which directly or indirectly causes harm to priority habitats will only be permitted if it has been clearly demonstrated that the benefits of the proposal outweigh the need to safeguard the important habitat, damage is minimised and measures put in place to mitigate remaining impacts and where damage cannot be avoided or fully mitigated, appropriate compensation is secured. This policy approach accords with policies in the National Planning Policy Framework (the Framework) which seek to conserve, restore and enhance priority habitats, requiring the application of the mitigation hierarchy. Design Principle 9 of the Birmingham Design Guide 2022, which is guidance rather than policy, sets a requirement that all development must enhance existing biodiversity and help increase Birmingham's ecological network. It is in this policy context that I consider how the mitigation hierarchy of avoidance, minimisation, mitigation and compensation, has been applied.
14. The Red Kite PEA was updated³ with an impact assessment in respect of the proposed drainage strategy. This would directly impact the existing Priority Habitat through works described as the 'temporary removal of habitat' to facilitate installation of underground drainage above which would be a sewer easement as well as the provision of a detention basin for storm water storage. The removed area of vegetation would then be grassed over to provide re-connectivity of habitats, with a suitable buffer to protect the retained sections of the habitat. However, this would not be a temporary removal of habitat as the area within the sewer easement, 5 metres each side of the drain, would have to be kept free of trees and could not therefore return to woodland.
15. The PEA indicates that the extent of Priority Habitat loss on site would be around 974 square metres. The remaining Priority Habitat woodland would be within two separate woodland blocks, separated from each other by the area of grassland. This fragmentation of the Priority Habitat would not help to conserve, restore and enhance this habitat as sought by the Framework. Harm would arise from this.
16. The Council considers the scheme should have avoided the areas of greatest ecological value on the site, in this instance the Priority Habitat. Whilst much of the proposed development, including the houses and access roads, would avoid the Priority Habitat, the drainage scheme would not. The appellant has indicated that they have avoided harm to this area through providing more detailed and accurate mapping. However, providing clarification about the extent of Priority Habitat is not avoidance. I have not been directed to evidence that demonstrates that alternative and less damaging proposals for the position and layout of drainage on site have been considered and found to be unsuitable, nor is there evidence of other revisions to the scheme layout or the development proposed to enable this. I am therefore unable to conclude that the scheme has taken all available steps to avoid harm to the Priority Habitat.
17. During works, measures to protect retained habitats and ecological value would be put in place including tree root protection areas and a Reasonable Avoidance

³ Red Kite Network Limited, Preliminary Ecological Appraisal and Ecological Impact Assessment Report, Revision A, 19 July 2024

Measures Method Statement. Secured by a planning condition, such as one requiring a construction environmental management plan, the scheme would minimise damage to the retained Priority Habitat.

18. In terms of mitigation, the Council confirmed at the Hearing that the proposed measures have optimised the amount of mitigation that could be delivered on site. The on-site mitigation could be secured by a suitably worded planning condition. I have no reason to disagree. However, it is accepted that the on-site mitigation would not be sufficient to fully overcome the loss of biodiversity value from the site.
19. The application pre-dates the requirement to deliver statutory biodiversity net gain (BNG). Nevertheless, any loss of biodiversity or ecological value would need to be secured in accordance with Policy TP8 and the guidance set out in Design Principle 9. A calculation has been made, and agreed between the parties, that the scheme would need to provide compensation for the loss of 3.49 habitat units which would need to be delivered off-site. It is proposed that this would be secured through the executed s106 agreement.
20. The Council does not have an adopted charging schedule or adopted guidance in respect of the provision of compensation for habitat loss or the cost of habitat units. It has produced a note⁴ benchmarking biodiversity unit prices from various sources including those costs used by other local authorities and BNG pricing across the country based on different habitat types and distinctiveness. Informed by the City Council's own typical costs associated with different woodland habitat interventions, a figure of £25,000 per habitat unit has been settled upon by the Council. I am satisfied that this is a reasonable calculation of the required sum in the absence of adopted guidance.
21. Together with an off-site biodiversity monitoring fee, this amounts to a financial contribution of £100,116 to compensate for the loss of lowland mixed deciduous woodland Priority Habitat and to deliver a BNG of 1%. The financial contribution would be directed towards habitat interventions in Northfield Parliamentary Constituency within which the proposed development would be located.
22. The executed s106 agreement, dated 5 November 2025, would secure the financial contribution and secure its use for off-site habitat contribution in the Northfield Constituency. I am therefore satisfied that the scheme would be capable of providing an appropriate level of compensation to offset the loss of the Priority Habitat. As such, I find that the planning obligation secured through the s106 agreement is necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development in accordance with paragraph 57 of the Framework.
23. Drawing together my findings, the scheme would result in a loss of Priority Habitat, in this case lowland mixed deciduous woodland, amounting to just under half of that surveyed on the site. This represents a significant loss of a threatened habitat. There is very limited evidence that avoidance of that loss has been fully explored through the consideration of alternative locations for the required drainage features on the site or through other changes to the scheme. In this regard, I am unable to conclude that the first step in the mitigation hierarchy which is to avoid harm, has been satisfactorily demonstrated. Notwithstanding my findings relating to

⁴ Birmingham City Council, Note on calculation of financial contribution for off-site habitat compensation, dated 29 October 2025 (Post-Hearing Document 7)

minimisation, mitigation and compensation, my conclusion is therefore that the scheme would cause significant harm to the Priority Habitat (woodland). I therefore find that the proposal conflicts with Policy TP8 as referred to above.

Other Considerations

24. The Focused Preferred Options Consultation Document is at an early stage of public consultation and yet to be examined. It therefore carries very limited weight.
25. The Council published the Birmingham Local Plan Housing Land Supply Position Statement (October 2025) alongside the Focused Preferred Options Consultation Document. This sets out that the Council has a housing land supply of 6.45 years as of a base date of 1 April 2025. The annualised housing requirement for the period April 2025 to March 2030 includes a 20% buffer to account for under delivery against its housing requirement in previous years, in accordance with requirements of paragraph 78 of the Framework.
26. This supply is made up of a combination of sites including sites with detailed planning permission where work has not yet commenced. On the information before me, there is nothing to suggest that sites with full planning permission will not come forward as asserted by the appellant. As such, I have no substantive reason to find that the housing land supply position as put forward by the Council is not correct.
27. The Framework is clear that existing policies should not be considered out-of-date simply because they were adopted prior to the publication of the Framework. It explains that due weight should be given to them, according to their degree of consistency with the Framework. The scheme accords with the policies relating to the delivery of housing set out within the BDP and I attribute significant weight to this. However, it conflicts with Policy TP8, which I have found to be consistent with the Framework. This policy is central to the determination of this appeal given the site's ecological value and the impact of the scheme upon this. I give great weight to this conflict.
28. The scheme would deliver 11 market dwellings, in an accessible location. Even in the context of the Council's sufficient housing land supply, the provision of housing is a benefit but tempered by the size of the scheme. The construction and subsequent occupation of the proposed housing would deliver a range of direct and indirect economic benefits, including employment, spending and financial receipts from Council tax. Social and community benefits would be delivered through the provision of a mix of housing and future residents supporting local services. The scheme would provide open space for residents although limited details of this have been provided. Given the size of the scheme, overall these amount to modest economic and social benefits, including the provision of housing, which attract moderate weight.
29. In terms of environmental benefits, the scheme would result in the loss of ecological value on the site although some interventions and enhancements would form part of the proposed mitigation. This could potentially benefit the adjoining designated nature conservation sites. However, the overall gain in biodiversity, which would be delivered through the mitigation in combination with the proposed compensation, would be limited, delivering a negligible BNG in accordance with policy requirements. Management of vegetation on the site, including to its boundaries may deliver some visual amenity benefits but the site does not detract

from the locality in its current form. The Council has indicated that the site is currently open space, although not publicly accessible and therefore the provision of open space for residents would deliver little in terms of environmental benefits. Together the environmental benefits of the scheme attract very limited weight.

Planning Balance

30. The Council can demonstrate a five year housing land supply and there are relevant development plan policies in place. As such, the scheme does not benefit from the presumption in favour of sustainable development under paragraph 11 of the Framework.
31. The scheme would deliver modest social and economic benefits and very limited environmental benefits. Together these attract moderate weight in favour of the scheme.
32. The proposal would be acceptable in terms of its impact upon highway safety, protected species, flood risk, visual amenity, trees as well as providing satisfactory living conditions and adopting sustainable construction measures and energy improvements. These are neutral factors.
33. Whilst the benefits are acknowledged, the scheme would cause significant environmental harm through the loss of the Priority Habitat woodland, a habitat identified as most threatened and requiring conservation. This loss would not be outweighed by the modest benefits of the scheme.
34. For this reason, taking into account policies that both oppose and support the proposed development, I conclude that the scheme would conflict with the development plan as a whole.

Conclusion

35. I find that the proposed development would be contrary to the development plan and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the appeal should be dismissed.

Rachael Pipkin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Miss Chantel Blair	Principal Planner, Cerda Planning Ltd
Mr Nathaniel Healy	Director of Red Kite
Mr Shahbaz Khokhar	Appellant
Mr Dean LeFeuvre	Principal Ecologist, Red Kite

FOR THE LOCAL PLANNING AUTHORITY:

Mr Richard Bergmann	Principal Planning Officer
Ms Nicola Farrin	Principal Ecology Officer

POST-HEARING DOCUMENTS

- PHD1 Email from Cerda Planning providing written agreement to pre-commencement conditions, dated 23 October 2025
- PHD2 Birmingham City Council, City of Nature Plan Executive Summary, February 2022
- PHD3 Birmingham City Council, City of Nature Plan, May 2022
- PHD4 Birmingham Local Plan Focused Preferred Options Consultation (Public consultation period: 23 October – 4 December 2025)
- PHD5 Birmingham Local Plan Housing Land Supply Position Statement (October 2025)
- PHD6 Cerda Planning response – Housing Land Supply (Oct 2025) and BLP Focused Preferred Options Document (October 2025)
- PHD7 Birmingham City Council – Note on calculation of financial contribution for off-site habitat compensation, dated 29 October 2025
- PHD8 Engrossed Section 106 Legal Agreement, dated 5 November 2025