

FW: 21/01028/OUTMAJ HMS Prison Wymott Moss Lane, Ulnes Walton, Leyland



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To: Claire Pegg/GBR

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**From:** Teresa Hughes <teresa.hughes@tameside.gov.uk>

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**Subject:** 21/01028/OUTMAJ HMS Prison Wymott Moss Lane, Ulnes Walton, Leyland

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Iain

GMEU were consulted on the above application in September (13.9.2021), but have waited until all available ecological information has been submitted to provide comments in relation to biodiversity. GMEU have had previous involvement with this proposal via: -

2020/00028/PREAPP (August 2020) - Construction of a new Category C prison adjacent to HMP Wymott and HMP Garth

Biodiversity Scoping Mtg (20 October 2020) – meeting notes to LPA 29.10.2020

2020/00043/PREAPP (December 2020) – Screening request under the EIA Regulations

Site visit with applicant and LPA (8<sup>th</sup> October 2021)

In addition, I am familiar with the broad landscape/ecological context of the area from other fieldwork associated with planning, access to LERN's database through licence with GMLRC (Greater Manchester Local Records Centre) accessed via GIS mapping technology.

I have considered all the submitted ecological information associated with the submission and in addition: -

Comprehensive Landscape Masterplan (Pick Everard, 608623-0000-PEV-GHX0011-XX-DR-L-0301, rev P06)

External Lighting Report (Pick Everard 608623-0000-PEV-GHX0011-XX-RP-E-0011, issue no P03)

Bowling Green External Lighting Layout – Sheet 01 (Pick Everard, 608623-0000-PEV-GHX-ZZ-DR-E-6310, rev P02)

Proposed SuDS Strategy Report (Pick Everard, 608623-0000-PEV-GHX0011-ZZ-RP-C-3502, issue no P06)

I have the following detailed comments to make on the proposals, with a summary and conclusions section found at the foot of this response: -

### Baseline Surveys and Evaluation

- In addition to the Preliminary Ecological Assessment (Ramboll, October 2020, issue 1), a number of species specific groups were investigated.
- GMEU are satisfied with the methodologies used and it would appear that reasonable effort has been used throughout. GMEU concur with the evaluation placed on the habitats and species/species assemblages.
- Members of the public/Ulnes & Walton Action Group have subsequently provided additional information, which is discussed further below.
- A number of biodiversity receptors are identified, which represent material considerations in the determination of the application and require avoidance, mitigation and/or compensation: -
  - **Bat roosts** (Conservation of Habitats and Species Regulations (Amendment) (EU Exit) 2019: Survey Report CGO Ecology Ltd Buildings 14.9.2021, P06 and Trees 27.8.2021, P01): -
    - A maternity colony of common pipistrelle bats is found in the Probation Service Office (B15), this has been present for over 10 years. Retained but impacted by proposals  
A day time roost used on a casual basis by pipistrelle bats at an off-site barn (B10 max count 4 bats). Retained
    - Primary commuting corridors from the maternity roost to west and south of Probation Service Office (B15). Retained but impacted by proposals
    - Potential tree roosts assessed from ground, aerial inspection and endoscope where necessary. All found to be negligible potential
  - **Barn owls** (Schedule 1 – Wildlife & Countryside Act 1981)
  - Breeding pair in barn (B11). Barn lost to proposal

- o Male roosting in off-site barn (B10). Barn retained off-site but may be impacted by proposals
- o Identification of flight lines to foraging areas to north and east. Off-site but flight lines may be impacted by proposals
- o Barn owl casual observations of perching within the prison compound (eg close to Probation Service Office and elsewhere)
- o **Great crested newt** (Habitats Regulations 2019) and **Common toad** (Section 41 NERC 2006 [Natural Environment & Rural Communities Act]) Great crested newt small population (max count 12) P39 to south of new Bowling Club. Pond retained but terrestrial habitat impacted.
- o Great crested newt via eDNA in Ulnes Walton Biological Heritage Site (BHS 42SE05, also presumed to be called Wymott Ponds), ditch 3; 250m and 350m respectively from the new prison proposals. Both habitats retained and sufficiently distanced from the active development.
- o Common toad in pond P34 to be lost to development along with ditches 1 & 2 and terrestrial habitat impacts.
- o **UK Priority Ponds** (Section 41, NERC 2006) are classified in part where they support priority or protected species such as amphibians.
- o **UK Priority Broad Habitat Broadleaved woodland** (Section 41, NERC 2006) is present to the west, but this is to be retained. Other woodland types are present (eg plantation) and areas will be lost. See discussion below on Biodiversity Net Gain.
- o Incidental records of hedgehog (Section 41 NERC 2006) were observed
- o Nesting birds (Wildlife & Countryside Act 1981) all nesting native birds are protected under this provision unless exempted via licence for pest species.

**Additional submitted bird data** (Chorley & District Natural History Society member and referred to in UWAG comments)

- An extensive list of bird data has been supplied via public submissions, which refers to high densities of red/amber bird species (RSPB but also some Section 41 NERC 2006) within 2km of the application site during both breeding and wintering season (autumn passage/winter). The LPA has requested that GMEU consider this additional information and whether it represents a material consideration within the determination of the application.
- It would appear that the records referred to by UWAG have not been submitted to the recognised Local Records Centre (eg LERN or the County bird recording data centre) so it would appear that these would not come to light during the normal desk based assessments that have been undertaken to support the application. This does not imply criticism of either the ecological consultants or the local bird recorder, but does result in late consideration of this information.
- However, a criticism is levelled at GMEU who advised the LPA that additional the need for either breeding or wintering bird surveys and that the bird assemblage could be scoped out. Therefore the contention is that this matter has been overlooked resulting UWAG state that the Impact Assessment is not fit for purpose. In order to reassure the LPA that the advice and the Impact Assessment are sound I have the following comments to make.
- The information that has now been provided does detail a good bird assemblage particularly of farmland species, which occur to the west of the application site (west of the railway crossing large field presumably south of Norris's Farm). Although the specific location is not provided, it can be assumed that this location is some 750m west of the application site and also at the BHS ponds to the north and west approx 250m from the application site.
- It is of note that the application site itself does not support habitats, which are suitable for this suite of farmland birds or overwintering pink-footed geese and hen harrier. The 'farmland' that is present is made up of small fenced (not hedged) paddocks and outbuildings which used to be used as a training area for inmates. The 'farmland' area within the application site can be viewed from publically accessible locations (eg Pump House Lane) and some bird data is provided by the local bird recorder for this location. However, the records provided from within the application site are not of the level or significance of the bird resource that has been recorded to the west of the railway. I have not gone into specific details regarding the species recorded, but can do so if required.
- The overarching matter is whether it was correct to scope out additional bird surveys following the Preliminary Ecological Appraisal. GMEU when advising a Council and an applicant on the scope of required assessments use both the Preliminary Ecological Assessment and government guidance. Government guidance (Defra Circular 06/2005) provides a test for protected species, but this can also be broadly applicable when considering the 'reasonableness' of requiring specific species/species assemblage surveys for priority (NERC 2006 or RSPB red listed), which do represent material considerations within the NPPF (July 2021). This guidance states: -

"..."

*“It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted. However, bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development.”*

- Nothing in the additional information lends itself to a conclusion that a material and substantive matter has been overlooked in the assessment and in scoping out detailed bird surveys. In providing the advice on scoping to the LPA it was my professional opinion that there was not a reasonable likelihood of (materially important) species being present within and affected by the proposal and that such surveys were therefore not warranted.
- It is of note that GMEU did scope in additional survey works for barn owl and advised that additional bespoke mitigation would be required for this protected species.
- In light of this additional information, I would conclude that the Impact Assessment is valid and that **no** further bird surveys are necessary for the application to proceed to determination.

#### **Conclusions on Baseline Survey and Evaluation**

- GMEU conclude that the baseline survey information is sufficient and reasonable to identify species and habitats of importance, which are material to the determination of the proposal. At this stage no further surveys or assessments are required.
- It is important to note that the site does support features of substantive value, which are mobile and will need to be accommodated via appropriate avoidance, mitigation and/or compensation should the proposal receive permission. Additionally, given the lengthy and phased buildout programme some monitoring of species will be required either precommencement or as the project progresses.
- Much of this is detailed within the species specific reports, but GMEU would like to see a precommencement survey of the pond and two ditches (P34 and Ditches 1 & 2) within the footprint of the proposal for great crested newt (via eDNA) and water vole. Evidence of both these species within colonisation distance are recorded within the submitted data. It is recommended that this precommencement work is included within a Reasonable Avoidance Method Statement for the clearance of these features such as timing and pumping out strategies. This can be secured via **condition**.
- The tree roost survey (CGO Ecology Ltd, 27.8.21, P01) identified a number of trees with potential roost features, which were considered negligible on further assessment. If any of these trees require removal and greater than 1 year has passed an updated assessment will be required. This can be secured via condition but only applies to trees to be removed that have already been identified within the Report as having some value.
- I would also suggest that the CEMP achieved via **condition** includes how each RAMS integrates with the relevant phases of the implementation.

#### **Mitigation, Compensation and Enhancement**

##### **Barn Owl Mitigation** (CGO Ecology Ltd, 19.10.21 P02)

- I am satisfied with the broad outline of the approach to mitigation and that this is in line with biodiversity industry standard. However, I have some detailed comments to make: -
- The barn owl breeding season should be taken to be February inclusive, as this Schedule species does breed earlier than smaller passerine birds.
- I would recommend > 30 days for establishment of the new nesting box in B10 and very strongly recommend that an additional box is placed elsewhere to ensure that there are other opportunities for the male to roost and avoid conflicts between the nest and the male roost site.
- The installation of the new nesting box will need to be cognisant that B10 is also a bat roost. The location of the box should avoid potential roosting features. There will be no need for a BMCL in this instance.
- I note the > 30m stand-off which should also include the storage of materials and lighting.
- I note that no new lighting is to be achieved, but question if a baseline has been established within the vicinity of both B11 and B10 to ensure that the mitigation will not breach these conditions.
- I welcome the enhancement by placing an additional nest box to the south in the BNG area and would suggest the large barn south of the proposed Bowling Club if it is in MoJ's control.
- The Barn Owl Mitigation needs to be an iterative process given the extent of the proposal and the phasing time over several years and will require close monitoring initially with remediation implemented if required.
- I would suggest that a condition be placed on any permission – if granted – to require an updated Mitigation Strategy once contractors, the phasing plans and any Associated/Ancillary works are identified. This could include a time trigger such that it is submitted and agreed prior to commencement of works within Xm distance of the breeding (B11) and roosting site (B10).

##### **Bat Roost Mitigation Plan** (CGO Ecology Ltd, 14.9.21, P06)

- There is sufficient information presented to demonstrate that the bat roost can be retained and that implementation of the proposal will not require a Natural England Bat Licence.
- However, impacts will need to be mitigated and I note the outline proposed within the Report, including avoidance of building works on the relocated Boiler House during the bat activity season when the maternity roost is active (May – August) and the potential use of prefabricated build materials (site mtg note 8.10.2021).
- As with the barn owl mitigation this needs to be an iterative process. Whilst I can confirm that in my professional opinion avoidance of disturbance is achievable this needs to be considered within the context of the relocation of the Boiler House and any construction routes that might be operational for several years, involve multiple heavy vehicle movements including material deliveries and spoil removal.
- For example, the location of an alternative haul road was discussed on site. It is my opinion that this needs to be a viable option for consideration as the scheme detailed programme develops.
- Therefore, I would recommend that a full Mitigation Strategy for the maternity bat roost (building B15) is secured via condition and is required prior to the commencement of any works within 30m of the roost site. This should include sufficient detail on the vehicle movements, haul road requirements (eg additional lighting design) to be able to develop a suitable avoidance strategy.
- I note the proposal for enhancement of an additional 20 bat boxes on trees, which is welcomed. I would suggest that integrated/externally mounted bat boxes are also placed on the exterior of some of the buildings as these offer a different type of roost opportunity. As part of the BNG monitoring I would suggest that the bat boxes are checked for condition and usage during the period of the LEMP (Landscape and Ecological Management Plan).

##### **Great crested newt Mitigation** (CGO Ecology Ltd, 9.9.21, P01)

- Note the recommendation above in relation to precommencement surveys and RAMS for removal of the common toad pond (P34) and Ditches (1 & 2).
- The relocation of the Bowling Club will impact amphibian terrestrial habitat.
- I concur with the assessment that there is an Amber risk of 'offence likely'. The Natural England [guidance](#) is clear in its approach that amber risks can be managed and the need for a licence can be avoided.

- Having inspected the site in October (8.10.2021) I am content that this approach can be adopted with the use of a strictly controlled and supervised RAMS. This is justified on the basis of the distance of the development from the pond and Ditch 3 (approx 100m), the relative small footprint of the Bowling Club and associated car park, and the current habitat structure. Note Ditch 3 had positive eDNA result but it not confirmed as a breeding site but is highly likely to be a resting/sheltering place under the terms of the legislation.
- It is important to recognise that this approach does pose some construction timetabling risks should great crested newt be encountered and/or the Ecological Clerk of Works deems that the risk has moved from Amber to Red at any point. However, this does not preclude the use of RAMS in this particular instance.
- An outline of the proposed RAMS is provided within the Report however, I would recommend that this is revisited prior to the commencement of vegetation clearance or enabling works on this full element of the scheme.
- The success of the RAMS approach is based in part on habitat management of the current grassland and it is imperative that this is continued up to and including the when works commence. Should the condition of the habitat become better, for example grassing or cutting relaxed and a longer sward and scrub begin to invade this will increase the suitability for supporting gcn in their resting places and an offence may not be avoidable.
- I would recommend that a condition is used to secure the updated RAMS strategy and this can be triggered prior to the scheduled commencement to the phase of the Bowling Club relocation.
- The area to the south and east of the new Bowling Club is included within the Biodiversity Net Gain off-set habitats. This element of the proposal includes the creation of additional 6 ponds and planting of new hedgerows, along with seeding of conservation/management of wildflower grassland. The creation of the ponds and hedgerows is to be welcomed and will increase the carrying capacity of this part of the landscape for amphibians.
- It was suggested at the site meeting by GMEU that the BNG off-set should be achieved as early as possible in the overall proposal's build timeline. As the Bowling Club is in full would it be possible to condition the inception of the BNG works in line with the implementation of this phase of the project?
- As the works are not to be undertaken using a Natural England licence, I would recommend that the LEMP includes eDNA monitoring of P39 and the newly created ponds to demonstrate successful enhancement. This could be undertaken in Years 5 and 10 post installation.

### Documents required to be conditioned

As indicated above any approval if granted will need to secure via condition the following in order that the biodiversity matters are sufficiently controlled: -

- **Construction Environmental Management Plan** – we discussed on site that this should also be supported by a Construction Surface Water Management Plan, this is important due to maintaining water quality during any dewatering that might be required on the site, particularly as the ditches and drains have suitability to support water vole and amphibians. A construction lighting strategy will be required.
- **Operational Lighting Scheme** – while a strategy has been proposed I could not locate the contour plans/detailed layout for the outline schemes. This will need to be provided. See comments below re the Bowling Club Lighting.
- **Landscape Proposals** for the scheme. It may be appropriate to have phasing triggers for when different elements of the landscape are bought forward.
- **Landscape and Ecological Management Plan** – this will be required to demonstrate the management of the site and the BNG offset for the requisite period of **30 years**. This should include not only management requirements but a schedule of monitoring to ensure that the offset habitats attain and maintain the required condition. A mechanism of reporting to the LPA/their identified agent and remediation agreement process should also be included.
- **Biodiversity Enhancement Plan** – The submission identifies a number of features that will provide biodiversity enhancement (eg bat boxes, additional barn owl box to the south). These should all be captured within one document/plan. I am satisfied that this could be included within the detailed landscape plan and/or within the LEMP.

### Full Scheme – Bowling Club relocation

- I have considered both the Lighting Strategy and Surface Water Drainage Strategy for this element of the proposal and have the following comments to make: -
- The run-off from the Bowling Club should not be into any nearby ponds (section 3.5.3). The existing pond is a Priority Pond (NERC) and supports protected species and it is likely that the newly created ponds will colonise with gcn.
- It is probably that the car park, paths and footways around the Club will require salt/grit treatment in the winter months. The Green itself will need to be highly managed to prevent weed invasion and the growth of the right kind of sward resulting in herbicide and fertilizer applications. I would be satisfied that clean roof water can be directed to one of the new ponds but all other surface water should be discharged elsewhere.
- The lighting strategy for the Bowling Club does not appear to detail the types or location of luminaires. However, the contour plan shows high lux levels both onto the belt of woodland to the north and also to the west where new planting is proposed. I would recommend that more detail is required on this element. In line with the NPPF (July 2021 para 185 c)) we recommend that applicants follow the Institute of Lighting Professionals guidance (01/21 obtrusive lighting and 08/18 wildlife sensitive lighting). The lighting scheme should include all necessary highways illumination, pedestrian footways, Green lighting and any other external lighting to the building. The Planning Authority may wish to see this detail amended prior to determination or to include a notwithstanding condition to require suitable detail.

### Biodiversity Net Gain (BNG report and excel spreadsheet)

- It was agreed at scoping that it was appropriate for the proposal to use the Biodiversity Metric 2 rather than the recently released Metric 3. This is in line with the emerging guidance within the Environment Act (November 2021) during the transition period.
- I note the contents of the BNG Report and the Metric spreadsheet. I have rerun the metric to adjust some of its elements as follows: -
- The ponds on site include Priority Ponds (NERC 2006) including the pond (P34) which is to be lost.
- The assessment has not included the ditches within the broad habitat type 'Lakes' and calculated the losses and gains (new ponds)
- Despite these minor oversights the BNG uplift would still be substantially greater than 10% uplift.

### UWAG Consultation Comments

- UWAG have submitted a detailed critique of the BNG process, which is interesting in its theoretical insight into the scheme. However, I would add the following commentary to assist the Planning Authority regarding the weight they give this analysis.

- The BNG Metric is designed to build into its unit cost model the difficulty and time to reach the required condition. It accepts that there will be both an initial loss of habitats and that some habitats take longer to reach maturity than others. It also includes a risk factor regarding the difficulty there is in creating/maintaining certain habitat types. Using an extreme example, although not relevant to the current site; peat or fen habitats are very difficult to recreate and are risky ventures due to the complexities of the substrate and hydrology. The high complexity of management is also reflected within the Metric costs. The Unit cost to create such a feature reflects those risks and the > 32 years it would take to achieve something that might approach this habitat type.
- Likewise the Metric allows 'trading' between easy to create/lower BNG value habitats, but restricts either loss or trading between hard to create and/or irreplaceable habitats such as Ancient Woodland, veteran trees, limestone pavement and very diverse species rich grassland (high distinctiveness). For example at this proposal; the retained wetland (rush pasture) to the west of the site is categorised under the 'Suggested action to address habitat losses' column indicating that 'bespoke compensation likely to be required'.
- The BNG Metric excel spreadsheet includes a Trading Summary tab, where all the habitat trades are assessed. In this case the trading has been modelled as acceptable.
- This does not negate the applicant and the LPA from considering whether the habitat trades are suitable and acceptable in this particular proposal. However, recognising that there will be a loss of woodland the proposed offset BNG to the south of the site will bring benefits to some of the other groups associated with the locality. This is will include amphibians in particular great crested newt, grasslands and hedgerows which have potential to support farmland bird species and add additional carrying capacity for small mammals and therefore hunting territory for barn owl.

#### **Summary and conclusion on BNG**

- GMEU accept the BNG calculation and whilst acknowledging the theoretical problems associated with the Metric, would advise the LPA that the application of the Metric by the applicant is in line with all the emerging Government guidance and modelling that is required to demonstrate a 10% uplift.

#### **Summary and Conclusions**

- The submission is supported by sufficient information and survey effort to enable the LPA to identify the biodiversity material considerations and impacts of the proposal.
- The outline mitigation measures provided within the associated reports are sufficient at this stage to demonstrate that risks can be managed and mitigation can be provided. Given the scale and phasing of the proposal updated and detailed strategies will be required to be secured via condition.
- Again and entirely appropriately, some precommencement update surveys are recommended prior to the commencement of works on particular phases of the proposal.
- A number of matters will require further submission to be secured on the Reserved Matters element of the proposals.
- A number of issues need resolving associated with the full application – the Bowling Club relocation. These do not preclude the relocation proposals but will need adjustment to make the scheme acceptable in terms of biodiversity. The LPA may consider that this detail/amendments are required prior to determination.
- The scheme demonstrates that Biodiversity Net Gain can be achieved on the site and provides an area of BNG offset as part of this proposal. The trading and assessment provided by the applicant is within the modelling parameters that this approach allows.

I hope you find these comments helpful. If there are any queries, or the information and recommendations are not clear please do get in touch. I have not copied in the applicant's agent as the LPA may wish to consider these comments alongside other associated matters (eg landscape or arboriculture).

Teresa

**Teresa Hughes**  
Senior Ecologist  
Planning