

Network Rail (East West Rail Bicester to Bedford Improvements) Order  
Proof of Evidence of Dr Sarah Cox  
Buckinghamshire County Council

**OBJ/232**

**INQUIRY DOCUMENT BCC/[x]**



**BUCKINGHAMSHIRE COUNTY COUNCIL**

**Transport and Works Act 1992**

**Network Rail (East West Rail Bicester to Bedford Improvements) Order**

**ECOLOGY POSITION STATEMENT**

**PREPARED BY**

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## 1.0 INTRODUCTION

### Scope

1.1 This document considers the adequacy of the baseline and/or impact assessment of the following ecological receptors that are of the greatest concern to BCC and AVDC and were raised in the Ecology Proof of Evidence (PoE, Document Reference BCC/2). It provides an updated position statement for the Inquiry following discussions with the applicant EWR's ecologist and Natural England and the receipt of additional information from EWR. To recap, the following are the main issues raised in my PoE:

- Dormouse;
- Statutory and non-statutory sites;
- Ancient woodland;
- Great crested newt;
- Bats;
- Barn owl
- The adequacy of the Ecological Compensation Sites;
- The management and maintenance of the Ecological Compensation Sites; and
- No net loss/biodiversity Net Gain.

### Documents Considered

1.2 BCC initially responded on ecological matters in pre-application consultation. On the 7 September 2018 and again in October 2018 BCC wrote to Network Rail on the to set out some outstanding concerns, as well as matters which it thought may be able to be

resolved through the submission of further information or secured by appropriate conditions or assurances.

1.3 Following the commencement of the Inquiry, three new pieces of evidence were introduced during the week of the 11 February 2018 as follows:

- NR207 – Client instruction details to progress with a biodiversity net gain approach within the EWR Phase 2 programme dated the 18 December 2018;
- NR208 – Network Rail's formal response to the Biodiversity Instruction (NT207) dated the 31 January 2019;
- NR209 – Confirmation of the acceptance of the Biodiversity Instruction by EWR dated the 5 February 2019; and
- NR238 – Moco Farm Ecological Compensation Site B28 technical note.

1.4 Subsequently, conversations between Dr Sarah Cox and Dr Stephanie Wray were conducted on the 28 February 2019 to agree a way forward in terms of the provision of additional information in an effort to resolve the outstanding objections. Part of this discussion was the agreement that the relevant briefing notes, emails and licence documents submitted/to be submitted to Natural England would be provided. It was stated that legal advice would be sought as to whether a) a formal rebuttal would be produced; or b) whether the information would be provided piecemeal.

1.5 On the 15 March 2019, BCC requested an update on progress as no information had been forthcoming (Appendix 1).

1.6 After that a file transfer was set up including the following information:

- Scheme-wide bat mitigation strategy;
- Great crested newt main works and Masterplan for Section 2a;
- Great crested newt main works and Masterplan for Section 2b/c;

- Otter licence; and
- Badger licence.

1.7 A second file transfer was set up on the 20 March including the following additional information:

- Great crested newt main works and Masterplan for section 2d;
- Great crested newt main works and Masterplan for section 2e;
- Route-wide bat licence for low to moderate conservation status significance roosts; and
- Swanbourne station bat licence.

1.8 Additional information was provided in a letter of the 6 February sent to Natural England (Ref OBJ/242) committing to and setting out possible procedures for achieving Biodiversity Net Gain; this information appears to relate to an instruction received on 21 December 2018 (document NR 207) and repeats the text of an email dated 31 January 2019 (document NR 208). BCC was also provided with briefing notes on the 22 March 2019 for otter, water vole, hazel dormouse and barn owl. Finally, I note that some information about a possible alternative ECS – B28 at Moco Farm – has been submitted as an inquiry document (NR 238).

1.9 A final email note in relation to ancient woodland was received at 2pm on the 10 April concerning ancient woodland (Appendix D).

1.10 No further information had been received as of the 1 April 2019, although the following is considered to be outstanding:

- Impact assessment for statutory and non-statutory designated sites:
  - Clarity required regarding which sites scoped in or out of assessment and why. This was requested in the form of a simple table within statutory and

non-statutory sites (including those Sites of Special Scientific Interest where the Natural England Impact Risk Zones overlap with the Project).

- Bats:
  - Additional justification on deviations from best practice, limitations on survey effort. In particular, clarity in relation to whether 'no access' meant access was refused or that is wasn't surveyed;
  
- Barn owl:
  - Further work to define the baseline assumptions with regard to this species, including an assessment of the likely numbers of animals to be affected.
  
- Ecological compensation sites:
  - Additional information about how the ECS were selected. This is not about the detailed design of each, but about how they were selected so that they will function for the key species they are designed for / provide functional connectivity in landscape to ascertain whether they are in the right place to ensure a no net loss.
  - Further information about mechanism for monitoring / maintenance / securing mitigation package to ensure that sites function as anticipated, including the scope of a potential NERC Act Agreement.
  
- Net gain:
  - written confirmation that the pending 2019 Defra metric will be used or, if unavailable, the 2012 metric;
  - Confirmation of the re-commencement of negotiations with stakeholders on Net Gain including BCC/AVDC and the Wildlife Trust;

- Updated metric calculations to understand the current situation.

1.11 Generally, this additional information has not been provided to the Inquiry.

1.12 It is also important to emphasise the obvious point that BCC/AVDC are authorities responsible for advising on, and where possible safeguarding, the interests of biodiversity and ecology within their respective administrative areas. In this regard it is unsatisfactory that EWR has not, despite requests, provided the information sought or shared with it much of the information provided to Natural England in a timely fashion.

1.13 This document sets out, in relation to the Ecology PoE:

1. Those issues considered to be addressed sufficiently and I consider do not need to be addressed by the Inquiry; and
2. Those issues on which we maintain our objection.

1.14 The Inspector should note that BCC/AVDC's position is largely aligned with Natural England's, with whom we have engaged in discussions. It would therefore make a great deal of sense for our case to be heard at the same time as Natural England's to avoid repetition and an unnecessary use of Inquiry time.

## **2.0 COMMON GROUND**

### **Hazel Dormouse**

- 2.1 In this section I provide a summary of the information requested and received in relation to hazel dormouse. BCC/AVDC's position on this species is supported by Paragraphs 4.5-4.8 in the Ecology PoE. Further information on this species was provided as an email to Natural England (dated the 20 February 2019), with an additional table setting out survey dates for each nest tube check. Confirmation that the final surveys were completed, and that no animals were encountered was provided with this note.
- 2.2 In essence, as a consequence of the lack of field data or desk study records for this species, and following consultation with Natural England, the additional information provided with regard to the dormouse survey is considered sufficient to remove the objection.

### **Ancient Woodland**

- 2.3 Objections pertaining to ancient woodland are threefold as set out in Paragraphs 4.33 – 4.49 and 5.4 – 5.10 of BCC/2. First, of fundamental relevance to the ability of BCC/AVDC to determine the extent of the baseline with regards to ancient woodland, details presented within the information submitted by Network Rail are contradictory and confounded by inconsistent naming conventions. Overall, whilst the locations of AWI sites identified as part of the desk study are covered in the tables identifying Habitats of Principal Importance, this does not make clear the number or extent of ancient woodland sites that must be assessed and mitigated for separately under standard guidance. Second, it is currently unclear as to the extent of habitat surveyed for ancient woodland or the methods employed/extent of survey access to scope in/out ancient woodlands. Third, the assessment of impacts (for Salden Wood in particular) does not align with the current standing advice from Natural England (see esp. Paragraphs 5.5 – 5.6 of the Ecology PoE on buffer zones).
- 2.4 EWR agreed to provide additional clarification on the 28 February. An email was received on the 10 April clarifying the position with regard to the access track and impacts to

Salden Wood. It is considered that, whilst some minor inconsistencies remain, BCC/AVDC are in a position to remove this objection.

### **3.0 RETAINED OBJECTIONS**

#### **Statutory and non-statutory sites**

- 3.1 Information in relation to the objections concerning statutory and non-statutory sites is included within paragraphs 4.16-4.21 of the Ecology Proof of Evidence (BCC/2). Simply put, the objection concerns the lack and consistency of reporting of statutory protected sites, Impact Risk Zones (IRZs) and non-statutory Local Wildlife Sites and Biological Notification Sites.
- 3.2 It is the case that, without the inclusion of the missing sites, or at least a rationale for their exclusion, the baseline ecological assessment, presentation, scope and assessment of impacts, and the scope and requirement for mitigation measures have not been considered fully. This is in direct contrast to the guidelines as set out in Section 6.7.1 of BS42020:2013, paragraph 174a of the NPPF and paragraph 5.35 of the EclA Guidelines.
- 3.3 EWR agreed to provide additional clarification on the 28 February. However, no information has been provided, we therefore have no option other than to maintain our objections. BCC/AVDC cannot otherwise be satisfied that all sites that should have been assessed have been. If there are sites that require assessment, this may have implications for the impact of the proposals, the mitigation proposals and the compensation package.

#### **Great crested newt**

- 3.4 Objections in relation to this species are covered by Paragraphs 4.9-4.11 of the Ecology PoE as well as within the Sections discussing the Ecological Compensation Sites (paragraphs 5.35 *et seq.*). These relate both to the adequacy of baseline data as well as the scope of mitigation measures as set out.
- 3.5 A number of licence applications have been submitted to Natural England for consideration, including the four provided by EWR on the 15 and 20 March 2019. Following conversations with Natural England, it is our understanding that these are still

being queried in terms of viability. It is considered that more time is required to set out a realistic baseline and work up a landscape-scale mitigation strategy that will deliver the required mitigation, in the right places. Natural England maintain their concern over the adequacy of the baseline data (in terms of access refused vs not accessed) but the key point is that of defining the strategy and having confidence that it will work. Whilst there is progress in some areas, there are still too many questions/queries and the objections in relation to this species still stand. BCC/AVDC acknowledges Natural England's role on the question of species licensing, but we maintain separate supporting objections.

### **Bats**

- 3.6 Objections in relation to bats are set out in Paragraphs 4.12 – 4.15 and 4.23 – 4.32 of the Ecology PoE. Essentially these can be distilled into issues pertaining to the adequacy of the baseline, presentation and consideration of impacts, and adequacy of mitigation measures.
- 3.7 Whilst it is understood that a scheme of this size requires a degree of compromise in relation to the application of standard best practice methodologies; it is expected that a consistent approach would be applied in terms of setting out/addressing limitations/deviations/caveats. This is not the case where discussion of limitations and/or deviations has not been consistently or indeed sufficiently justified or explained. It is unclear, therefore, whether the lack of justification is merely due to reporting insufficiencies or whether this is a more fundamental flaw with the protocols and procedures for data gathering. Further refinement of the text was, consequently, requested to enable clear understanding of the information that has been submitted, its limitations, and how these have been taken into account.
- 3.8 Following the submission to Natural England of several licence applications and an overarching bat mitigation strategy, followed by discussion with Natural England, significant concerns remain over the adequacy of the baseline as presented. Particularly in relation to the lack of detail on chosen methods, access restrictions, collision risk data/assessment and radio tracking information. Whilst progress is being made, particularly within the bat mitigation strategy, insufficient clarity on various points has been provided in relation to the baseline conditions and therefore the adequacy of the mitigation as presented. Whilst it is recognised that standard methods may not be appropriate or

feasible in all cases for a scheme of this size, a clear explanation of deviations is expected. This has not been provided. Further, where deviations have been unavoidable it would be expected that the text would explain what was done to overcome any issues.

- 3.9 There remains concern over what the statement 'no access' means in the context of the surveys as presented. Does it in fact consistently mean access refused? The former is acceptable and indeed inevitable for large schemes; the latter is generally not. This is particularly relevant in terms of attempting to mitigate without information on the location of roosts themselves (especially maternity roosts).
- 3.10 The final issue concerns the lack of timescales relating to the overall programme which means that it is not yet possible to determine whether the scheme is possible or will function as anticipated. Presently, we concur with Natural England who consider that there are simply too many unknowns at this stage and further time is needed to refine and develop the proposals. BCC/AVDC acknowledges Natural England's role on the question of species licensing, but we maintain separate supporting objections.

### **Barn owl**

- 3.11 The information in relation to barn owl is provided in Paragraphs 5.16 – 5.17 of the Ecology PoE and broadly relates to the adequacy of baseline data, assessment and mitigation measures.
- 3.12 In a supplementary note sent to Natural England on the 19 March (provided to BCC on 22 March), EWR concede that their statement that the population as a whole is at risk is over precautionary and is, therefore, not considered to a sensible approach. Additional details in relation to the suitability of foraging habitat close to the scheme and of the proposed mechanism for mitigation have been provided, albeit in the absence of survey information or an assessment of how many individual birds could be affected. Nevertheless, they conclude that, *'by closing the nest sites close to the Scheme, barn owls will be displaced from these areas and are not likely to be replaced by others, due to the absence of available nesting opportunities and the ongoing disturbance. By providing artificial nesting sites further away from the Scheme Boundary, the suitable foraging habitats within 1.5 km of the Scheme may still be utilised by barn owls with nest sites further afield, but these foraging habitats are likely to become the outer periphery of their foraging range, rather*

*than the centre of their territory, and therefore the risk crossing the rail line and being at risk of collision at the operational stage is greatly reduced'.*

3.13 The problem is that there has been no survey of nesting and roosting sites. There is no reason to think that there are no such sites, indeed we note that one objector (Ref OBJ/106) noted a barn owl roost in farm buildings near the proposed railway in the course of the Inquiry. Without this information it is difficult to understand the implications in terms of collision risk or to approve a mitigation strategy that could in fact result in higher levels of mortality than without the mitigation. It would be expected that screening planting would be needed at key locations but at present we have no information as to where these actually are as no information on possible crossing points has been provided. Whilst a suitable mitigation strategy may be subject to condition, there remains the question as to whether it is possible to do so based on finding suitable sites at a later date. Further, there is a risk to the scheme if suitable sites cannot be found as the condition could not then be discharged.

### **Ecological Compensation Sites (ECSs)**

3.14 Information relating to the ECSs is provided in Paragraphs 5.33 – 5.37 of the Ecology PoE. Essentially, the measures proposed by Network Rail to mitigate any adverse impacts of the project are confounded by a lack of rationale and detail in relation to the proposed Ecological Compensation Sites. In consequence, BCC/AVDC are unable to determine whether the suite of sites a) addresses adequately reported impacts, b) are feasible within the areas specified for the species identified as targets, and c) do not result in additional negative impacts which themselves require mitigation. This point relates both to protected species such as bats and great crested newts, and generally to all of the necessary compensation that it is sought to provide by way of the ECSs.

3.15 One of the recurring themes is that EWR present a worst-case scenario in terms of the baseline i.e. a total loss of habitat within the construction boundary. Whilst this is not likely to be realistic and it is noted that attempts have been made within the bat mitigation strategy to resolve some of the finer level details, given that this is what is presented, it is the current baseline against which mitigation must be assessed at this stage.

3.16 An additional factor is the lack of clarity in relation to how these sites were selected, how they will function in terms of the local scale populations, and whether they are going to be functionally connected through the landscape with other key habitats and indeed whether some are likely to be available to the scheme at all. In this regard, NR238 acknowledges that ECS B10 is already the subject of an outline planning application for the Greater Horwood Road residential development, which identifies the majority of B10 as public open space.

3.17 I have particular concern over the proposed addition of Moco Farm (ECS B28, adjacent to ECS B14, as set out in NR238), which is being explored as a possible alternative ECS option. There is no certainty over this site in terms of details provided, but the suggestion appears to be that it is going to be swapped for three of the existing ECS (B9, B10 and B17). NR238 states that:

*'This site would provide habitat which could either provide further compensation (if necessary to make up for any current shortfall) or enhancement for the Scheme or provide alternatives to other ECS within the TWAO boundary. Currently ECS B10 (to the north of Winslow) falls within an area of land which has been allocated for development and is the subject of an outline planning application for a residential development (Great Horwood Rd, Gladman Developments Ltd). It is understood that the developer does not want this land to be taken for the Scheme and is challenging EWR to find an alternative compensation/receptor site. Two further ECS, B9 and B17, are within the local area and may be replaced by the provision of ECS B28 at Moco Farm. This report demonstrates how the use of ECS B28 at Moco Farm could improve the mitigation proposals for great crested newts in this area and could release ECS B9, B10, and B17'*

3.18 NR238 summarises two possible scenarios. The first, a do-nothing option whereby B28 is not included as an ECS; and the second where (as stated above) this site replaces B9, B10 and B17. There is no option whereby B28 is included as an additional ECS. This summary details the potential constraints and opportunities in relation to each option. Of greatest concern is that, whilst both options aim to provide an increase of eight ponds and 'high quality terrestrial habitat', the use of B28 as an alternative would concentrate newts from metapopulations at some considerable distance from this site. NR28 states that *'there is potential that newts from up to 3.2km could be translocated to B28'*.

- 3.19 Aside from the issue of the requirement for disease screening for all translocated animals, using a single large site over several smaller ones spread through the landscape raises concerns over the long-term viability of the population, as such a strategy is inherently more vulnerable to outside influences and is therefore more at risk of extinction. NR238 also goes on to acknowledge that, *'without B10 there is potential for cumulative impacts upon the metapopulation [metapopulation 2B6 assumed to support a medium population] from the Great Horwood Rd development which would also need to be considered.'* Of note is that despite identifying this possibility, this factor has not then been considered at all.
- 3.20 There is also a lack of consideration of additional as opposed to alternative options within NR238. Specifically, in addition to lack of discussion over inclusion of B28 as an additional ECS, in relation to the removal of B17 (no reason is given as to why this would be replaced) the document states that *'It may be possible to enhance within Ponds East of Lower Grove Farm Biological Notification Site which is within the metapopulation area and use this area as a receptor site however together with the permanent habitat loss this may not provide sufficient carrying capacity and may result in a loss of favourable conservation status within the metapopulation.'*
- 3.21 Clearly, however, as highlighted by NR238, the strategy has yet to be fully explored and presently, we consider that there are simply too many unknowns, not least in relation to the missing landscape scale perspective and baseline assumptions and our objection stands.
- 3.22 Moco Farm/B28 is the subject of a planning submission to AVDC (19/00837/APP).
- 3.23 Further details on the ECSs were requested but no further information has been forthcoming. It is accordingly not possible to demonstrate that the proposals will be able to achieve no net loss (or biodiversity Net Gain) as the ECSs are key to this. Nor is it possible to remove our objection on this point.

#### **Management and Maintenance of ECSs**

- 3.24 Information in relation to the objections referring to the management and maintenance of the ECSs is provided in Paragraphs 6.13 – 6.16 of the Ecology PoE and relates to the

lack of detail concerning a mechanism for continued review of prescriptions, their success in achieving the desired aims, the timescale of the provision and procedure for review and subsequent amendment where necessary.

- 3.25 Following recent conversations with Natural England, it is clear that further information including legal agreements (leaseholds and covenants) have been submitted to that organisation for consideration. However, the information has not been shared with BCC/AVDC despite our concerns and the possible need for us to be a party to such agreements. Whilst it may be possible that some of our concerns may be addressed through, for example, NERC Act Agreements, this is not a matter that we have been able to consider. However, given that EWR relies upon compensation (even if that has not been shown to be adequate), it is important that it can demonstrate that the compensation will be delivered and secured for the long-term.

#### **No net loss/Net Gain**

- 3.26 Objections in relation to Net Gain are provided in Section 6 of the Ecology PoE. Further information as set out in Section 1 of this note has been provided in the form of a defined protocol and instruction from Network Rail to proceed. This is a positive move, although to some extent it is simply returning to the position that was adopted on behalf of EWR earlier in the development of the project. Despite that, while the letter sets out a defined protocol, the details are still missing.
- 3.27 Specifically, in their letter dated the 6 February 2019, it is said that '*[t]he EWR Alliance will ... recalculate the net loss of habitats along the Scheme*'. However, they have provided no additional information in this regard. BCC/AVDC remain in a position whereby the level of loss associated with the scheme is unknown. The next point of the Network Rail Letter states that the metric will be agreed with Natural England, with verbal assurance that the new Net Gain calculator will be employed to achieve a 10% Net Gain if it is available. Where it is not realised in time, the 2012 metric will be employed. This point is again well received but again there has been no further progress or assurance on it. It is important to see the detailed methods to be employed to provide some level of confidence that they are working towards delivery. Point 3 of the letter goes on to state that EWR will calculate the habitat gains through landscape planting and the ECSs, asserting that there

will be improvements since the ES '*in light of changes such as the acquisition by NR of Moco Farm*'. The ECSs were of course selected to compensate for habitat loss, rather than provide Net Gain. It is also not yet clear that Moco Farm is proposed as an additional site (and if not, why not). Document NR 238 promotes it as an alternative to ECSs B9, B10 and B17). Point 4 then sets out that net gains will be achieved '*through partnership with the local area*'. This is welcomed but is dependent on negotiations with landowners. That said, whilst mitigation to address significant impacts should focus on local sites in line with current EclA guidelines, options to achieve a biodiversity Net Gain are not restricted. There is, however, the trade-off (strengthened within the new metric) whereby selection of sites that are locally connected will result in the need for a lower overall area to achieve the 10% gains.

3.28 Ultimately, however, it appears inevitable that the proposal will not avoid net loss (something recognised in the 6 February letter) and it is impossible for BCC/AVDC to advise on the prospect of the proposal turning that around and achieving Net Gain in the long-term given that we have no further information to confirm the methods that will be used to secure progress towards this goal. It is considered that further details on the methods to be employed that are specific to the scheme rather than simply the elements of the metric are required; that could form the basis of a condition. Further, as noted above, the promised revised calculations have not been provided. Presently, I consider that there are simply too many unknowns, so we have no option but to maintain our objection on this fundamental point.

## **4.0 CONCLUSIONS**

- 4.1 Whilst we aim to be as pragmatic and practical as possible to facilitate the approval of this scheme, it is considered that whilst additional information in relation to dormouse is sufficient to remove our objection for this species, insufficient additional progress or information has been provided to enable us to remove our objections on all other matters. We therefore maintain our objections in relation to the adequacy of the baseline/impacts/mitigation for statutory and non-statutory sites, great crested newt, bats, barn owl, ECS and Net Gain. Additional time will be required to ensure that the scheme delivers both the required mitigation and confidence in the process by which Net Gain can be achieved.
- 4.2 As it stands, we maintain that the information as presented falls short of expectations as set out by standard best practice and BS42020:2013, as well as the Policies, aims and objectives contained within the emerging Vale of Aylesbury Local Plan and the NPPF.
- 4.3 In conclusion, the Council respectfully requests that the Secretary of State has regard to the concerns set out in the proof, recognises the substantial conflict with applicable policy and guidance and does not make the TWAO for the EWR scheme as currently proposed. More information is required to properly scope, assess and address the ecological impacts of the proposal and to build into the scheme (or at least provide a way of securing) ways of avoiding, mitigating and, if neither of those are possible, compensating for those impacts, as well as meeting the goal of biodiversity Net Gain.