



# Proof of Evidence of Andrew Pankhurst on Ecology/BNG

90 Fairmead, Cuffley Hill, Goffs Oak, EN7 5EX (Appeal Ref: APP/W1905/W/22/3300254, Planning ref: 07/19/0200/F)

On Behalf of:  
Countryside Properties (UK)Ltd and Landowners

August 2022

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# **SES Quality Management**

<b>Project</b>	90 Fairmead, Cuffley Hill, Goffs Oak, EN7 5EX (Appeal Ref: APP/W1905/W/22/3300254, Planning ref: 07/19/0200/F)
<b>Report title</b>	Proof of Evidence of Andrew Pankhurst on Ecology/ Biodiversity Net Gain
<b>Revision Number</b>	D

<b>Revision</b>	<b>Status</b>	<b>Date</b>	<b>Author</b>
C	Final Draft	25.08.2022	Andrew Pankhurst BA(Hons) ACIEEM (Director)
D	Final	30.08.2022	Andrew Pankhurst BA(Hons) ACIEEM (Director)

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## **1.0 Personal Statement**

- 1.1** My name is Andrew Pankhurst and I am Director of Ecology at Southern Ecological Solutions (SES) Ltd. I am an associate member of the Chartered Institute of Ecology and Environmental Management (CIEEM) and hold a BA(Hons) degree in law. I have approximately 14 years' experience in ecological consultancy in the UK providing advice on a range of development projects, including large scale residential, commercial and infrastructure developments. I was also part of the steering group assisting Barratt Developments PLC which established the Biodiversity Net Gain good practice principles for development (Baker *et al.*, 2019) and the ecology lead on 'Land east of Aylesbury' a residential development that is a case study within the Biodiversity Net Gain best practise principles for development (Butterworth *et al.*, 2019). Kingsbrook (formerly 'land east of Aylesbury) was also featured as a case study for best practise within DEFRA's 25- year environment plan (HM Government, 2018).
- 1.2** I have produced/technically reviewed numerous Ecological Impact Assessment reports as well as Biodiversity Net Gain (BNG) reports and metrics through DEFRA 2.0 to the current iteration DEFRA Metric 3.1. Such projects include those similar to the appeal site.
- 1.3** As a company SES has been established for 16 years and has won industry awards for biodiversity mitigation and enhancement design (Big Biodiversity Challenge 2016 Large Scale Permanent and Excellence in Planning for the Natural Environmental Southeast England 2016). The opinions I express within this PoE are my true and professional judgements based on scientific evidence and experience.

## **2.0 Scope of Evidence**

- 2.1** SES were instructed by Countryside Properties (UK) Ltd and the landowners to undertake a BNG assessment for the appeal site in July 2021. The initial metric and supporting assessment were completed in August 2021. Following liaison with the Borough of Broxbourne Council, as the Local Planning Authority, and the Hertfordshire and Middlesex Wildlife Trust amendments were made to the BNG Assessment with the final BNG Metric being produced in December 2021 (CDA39) (submitted with the planning application in January 2022). The metric was supported by landscaping layout CDA35.
- 2.2** Following the refusal of the application by Members at the Borough of Broxbourne Council's Planning and Control Committee, SES have been instructed by Countryside Properties (UK) Ltd and the landowners, as Appellants, to provide a Proof of Evidence (PoE) with regards to the BNG assessment submitted for the site. This evidence is based on the BNG metric produced by SES (latest update in December 2021, CDA39 (submitted January 2022)), which details the predicted BNG that the site will achieve subject to appropriate implementation and management.
- 2.3** This PoE summarises the ecological evidence and sign posts the reader to further relevant information in response to the points raised in relation to BNG matters within the Borough of Broxbourne Council's Statement of Case (SoC).

### **3.0 Reasons for Refusal**

**3.1** Borough of Broxbourne Council's reason for refusal is set out below:

*The proposal would over develop the site to the detriment of its semi-rural character. As a result of the quantum of development, the proposal is incapable of guaranteeing delivery of a net gain in biodiversity, as secured by an additional buffer. As such, the proposal would be contrary to policies DSC1 and NEB1 of the Broxbourne Local Plan and to the aims and objectives of paragraph 174 of the NPPF 2021 which seeks to conserve and enhancement the natural environment and promote biodiversity.*

**3.2** The reason for refusal has two 'limbs':

- *The first relates to the impact of the proposal and in particular the overdevelopment of site, on the character of the site in its context*
- *The second relates to the impact of the overdevelopment of the site on the biodiversity net gains the proposal can secure*

**3.3** This PoE will address the second 'limb' for refusal which the Borough of Broxbourne Council expand upon within their Statement of Case (CD C5) below:

*Policy NEB1: General Strategy for biodiversity and associated paragraph 174 of the NPPF seeks protection and enhancement of the countryside. In particular, those policies require developments to secure biodiversity net gain wherever possible.*

*The Council's case is that the proposals are not only an overdevelopment of the site, but that this overdevelopment diminishes the ability to deliver meaningful biodiversity net gain onsite. The application indicated net gain at only 1% (with no buffer) is likely to be reduced and eroded through the delivery as a result of (for instance) of construction alterations or occupiers' choices within their own curtilages.*

*The Council will show in evidence that, as a matter of policy (by reference in particular to the approach to be adopted under the Environment Act 2021 when it enters force, and to the manner of operation and the margins of error in the metric), and in the circumstances the case, the 1% net gain indicated by the metric does not provide a reliable basis for concluding the proposal will secure a net gain. As an environmental matter to which a precautionary principle should apply, that risk of erosion is not acceptable. This is a further element of the harm caused by overdevelopment of the site in excess of the quantum in the allocation.*

#### 4.0 **Policy and Guidance**

4.1 This section summarises the relevant policies and guidance relating to BNG.

##### **National Planning Policy Framework (NPPF) July 2021**

4.2 Of particular relevance to this evidence in considering BNG matters related to the reason for refusal are the following paragraphs of the NPPF:

1. Paragraph 8 seeks to achieve sustainable development where opportunities can be secured to deliver net gains. In respect of the environmental objectives, this includes improving biodiversity.
2. Paragraph 174 advises that decisions should contribute to and enhance the natural and local environment by: *d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;*
3. Paragraph 180 advises Local Planning Authorities that when determining applications the following principle should apply: *d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.*

##### **Broxbourne Local Plan (adopted June 2020)**

4.3 The Local Plan allocates the appeal site for residential development by policy GO5. This policy makes no reference to BNG.

4.4 The Local Plan references BNG in a number of locations, policy NEB1 is the most relevant to this appeal, along with the supporting text:

*Policy NEB1: General Strategy for biodiversity:*

- I. Development proposals will be expected to apply the mitigation hierarchy of avoidance, mitigation and compensation.*
- II. Development proposals should result in net gains to biodiversity wherever possible.*
- III. The Council will seek the creation of new networks of biodiversity, as well as the extension, enhancement and active management of existing sites.*
- IV. Opportunities to connect habitat fragments through the creation of stepping stones, using built form, vegetation or green areas will be assessed as part of all relevant applications.*
- V. When granting permission for any proposals that include measures to improve biodiversity, the Council will impose conditions or seek planning obligations that secure appropriate management regimes to deliver biodiversity gain in perpetuity.*

*Biodiversity Impact Calculator:*

*The DEFRA biodiversity impact assessment metric has been designed to quantify the value of biodiversity (in terms of habitats) in a consistent, transparent and objective way. This mechanism is considered to be the appropriate method for determining ecological value and delivering measurable net gain. The relevant assessment metric can be found on the Council's website at [www.broxbourne.gov.uk/neb](http://www.broxbourne.gov.uk/neb).*

*If biodiversity losses resulting from a development cannot be avoided (by locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then the planning permission will likely be refused.*

4.5 The link contained within paragraph 27.8 directs the reader to a Council webpage that advises:

### *Biodiversity impact assessment calculator*

*Local Plan Policy NEB1: General Strategy for Biodiversity, requires that “development proposals should result in net gains to biodiversity wherever possible.”*

*The Defra biodiversity impact assessment metric is considered to be the appropriate method for determining ecological value and delivering net measurable ecological gain. The Defra metric and supporting guidance documents can be downloaded from the Natural England website.*

*In order to use the tool, applicants will require the following:*

- *habitat type*
- *habitat condition*
- *area or length of each habitat, hedgerow or linear feature*
- *the impact from development, both direct (onsite) and indirect (offsite)*
- *onsite biodiversity mitigation/enhancement measures*

*The survey and calculation should include the whole of the development boundary (red line) as a minimum. The survey should include habitats within the entire ownership boundary (blue line), as ecological compensation can be incorporated within this boundary. All habitat compensation measures within the ownership boundary should be included within the calculation as both existing and proposed habitats.*

*A development master plan or indicative plan is necessary to inform the assessment as this will determine the habitats that will be in place post-development, including habitats to be retained and enhanced. It is therefore essential that the ecologist and landscape architect work together.*

### **Other Material Considerations**

- 4.6** The Council has no Supplementary Planning Documents or Guidance pertaining to Biodiversity.
- 4.7** The Environment Act 2021 is also a material consideration. It provides a legal basis upon which BNG can be secured. Whilst it expresses an intent to secure 10% BNG in the future, this requires further legislation to be enacted which is not due to be implemented until October / November 2023.
- 4.8** It is clear from the above summary that there is a clear drive to ensure that development should aim not to harm biodiversity and protect ecological interests at both the national and local level. It is also clear that there is currently no requirement in policy or law to achieve a specific level of net gain.



## **5.0 Analysis**

### **The Appeal Proposal**

- 5.1** As referenced above, the BNG assessment was first undertaken in August 2021, the BNG assessment went through consultation with the Borough of Broxbourne Council's ecological consultee Matt Dodds at Hertfordshire and Middlesex Wildlife Trust (CD6a and CD6b). Working with the consultee a conservative and precautionary approach to BNG was adopted in the assessment, where target conditions were set, factoring in predicted impacts from the development such as recreational pressure. The adoption of this approach within the metric was accepted by the Borough of Broxbourne Council's consultee, the Hertfordshire and Middlesex Wildlife Trust, in January 2022 subject to planning conditions to secure the predicted BNG (CD6b). This position was reported by the Planning Officer in his report to Committee (CDa41) recommending the proposed development for approval.
- 5.2** The site was assessed under the DEFRA metric 3.0 with a BNG for habitats predicted at 0.96% (CDA39). This predicted net gain has been assessed based on landscaping proposals and proposed habitats areas plan (CDA38 and CDA40 respectively). This assessment facilitated agreement that the BNG could be secured by planning conditions requiring a Landscape Ecological Management Plan (LEMP) and landscaping details to be submitted and agreed. I understand that a LEMP condition forms part of draft conditions for the appeal and the appellant agrees to the imposition of such a condition on the Inspector's decision if the appeal is allowed.
- 5.3** Furthermore, the site Construction Environmental Management Plan (CEMP): Biodiversity section, will include measures to safeguard habitats proposed to be retained and enhanced against risk of damage/accidental incursion during the construction process, such as use of protective fencing, signage, and site monitoring protocols which are standard practise protection measures.
- 5.4** These planning and site construction control mechanisms will ensure that the predicted BNG for the site is secured and achieved.

### **The Metric**

- 5.5** The BNG metric and calculation process has been designed to account for uncertainty that proposed habitat creation and management will be unsuccessful, aiming to avoid situations where habitats that are created and enhanced fail to adequately off-set biodiversity losses.
- 5.6** The Biodiversity Metric 3.0 – User Guide (CDF12) states that uncertainty and risk of failure is accounted for within the metric through the application of risk multipliers, which are guided using the latest scientific evidence base (pg 50-52).
- 5.7** The application of risk multipliers to metric calculations constitutes a precautionary approach; the typical consequence of this is that the number of units generated by compensation habitat is reduced, such that the habitat area required to offset losses exceeds the scale of habitat to be lost or damaged. Difficulty of habitat creation / enhancement is considered among these risk multipliers, with a habitat-specific difficulty risk multiplier applied to created / enhanced habitats according to four possible categories (Low, Medium, High and Very High).

- 5.8** The target habitat condition is also set based on the requirement to meet a number of specific criteria's, this allows BNG scores for each habitat to be set using the following parameters 'Good, Fairly Good, Moderate, Fairly Poor and Poor'. Post-development, habitat condition achieved on site is determined and evidenced through ecological assessment against habitat-specific condition criteria during post-implementation monitoring. However, where development occurs and habitat is lost in advance of habitat creation and enhancement, realistic targets must be set for post-development habitat conditions using professional judgement. This approach has been applied at the appeal site and target conditions have been agreed in advance with the Borough of Broxbourne Council's ecological consultee the Hertfordshire and Middlesex Wildlife Trust (CD6b).

### **How is Biodiversity Net Gain Secured?**

- 5.9** It has been proposed by the Borough of Broxbourne Council's consultee (CD6b) that BNG delivery is secured via a planning condition for a Landscape Ecological Mitigation Management Plan (LEMP). This is agreed to be the appropriate vehicle upon which to secure BNG.
- 5.10** This LEMP will cover implementation and management and also provide controls such as monitoring visits to track the implementation of BNG habitats, evidence delivery and establish protocols to be followed in the event that adaptive management is required to meet set objectives. The implementation and management of habitats as described in the LEMP will be secured via an active estate management regime. Habitats within residential curtilages will be limited to gardens, which are a low distinctiveness habitat within the metric and account for little biodiversity value due to the risk of uncertainty of what form the garden will take. Due to this uncertainty the condition is fixed at 'Poor' which builds in a precautionary approach to the BNG value of this habitat. Therefore, this precautionary approach does not account for homeowners that create a garden with a variety of habitats more valuable to biodiversity such as scrub, flowers, shrubs and trees which are unaccounted for within the BNG assessment and would provide further BNG uplift.
- 5.11** It is an aspiration that given this active management a higher condition than those precautionarily set within the metric calculations can be achieved for some habitats such as other neutral grassland and therefore a higher BNG score could be achieved. Attained BNG will be reported and evidenced to the Borough of Broxbourne Council via the monitoring and reporting mechanisms within the LEMP. New residents will also be informed of biodiversity interests including BNG and the aspirations for the Proposed Development, as well as other biodiversity features provided within the site such as bat and bird boxes.

### **Recent Appeal Decisions**

- 5.12** The recent appeal decision (December 2021) for Land at Filands Road/ Jenner Lane, Malmesbury SN16 9HZ (APP/Y3940/W/21/3278256) (CD G6) explored the requirement for a of 10% biodiversity net gain. The Environment Act 2021 although passed requires secondary legislation to implement minimum 10% net gain, therefore 10% net gain as a requirement from this Act is not yet enforceable. The Inspector then found that in the absence of a specific policy stating exact requirements a net gain of 1% is policy compliant in such circumstances as is the case with Policy NEB1: General Strategy for biodiversity and associated paragraph 174 of the NPPF.

## **6.0** Conclusion

- 6.1** It is considered that robust and deliverable BNG will be delivered at the appeal site. The predicted level of BNG complies with current policy within the NPPF paragraph 8, 174 and 180 as well as policy NEB1 listed within the Broxbourne Local Plan where no specific targets for BNG are required. Mandatory BNG as described within the Environment Act 2021 is not enforceable until secondary statutory instruments are in place which are not due till October / November 2023.
- 6.2** The BNG assessment and metric has been agreed as acceptable through the consultation process with the Borough of Broxbourne Council's consultee, the Hertfordshire and Middlesex Wildlife Trust. It is also agreed with that BNG delivery should be secured via a planning condition for a LEMP. The LEMP will contain details on implementation and monitoring of the enhanced/ created habitats which will secure the target level of BNG. During the construction process the retention and protection of retained habitats within the appeal site will be secured via a planning condition for a CEMP: Biodiversity.
- 6.3** The BNG metric has been designed to account for uncertainty that proposed habitat creation and management will be unsuccessful, aiming to avoid situations where habitats that are created and enhanced fail to adequately off-set biodiversity losses through the application of risk multipliers which mitigate potential BNG erosion through the adoption of a precautionary approach. A precautionary strategy to target habitat condition has also been adopted and accepted through consultation with the Borough of Broxbourne Council's consultee Hertfordshire and Middlesex Wildlife Trust to ensure deliverability of predicted BNG levels.
- 6.4** The recent appeal decision (December 2021) for Land at Filands Road/ Jenner Lane, Malmesbury SN16 9HZ (APP/Y3940/W/21/3278256) (CD G6) explored the requirement for a of 10% biodiversity net gain. The Inspector then found that in the absence of a specific policy stating exact requirements a net gain of 1% is policy compliant. This decision is considered to be material to the appeal site as there are no specific policy requirements setting BNG targets and the appeal site demonstrates a deliverable BNG.
- 6.5** It is considered that in light of the above that the appeal site will deliver the policy compliant predicted BNG which can be secured via appropriately worded planning conditions.

## 7.0 References

Baker, J, Hoskin, R. Butterworth,T (2019) Biodiversity net gain. Good Practice principles for development a practical guide C776a. London.

Butterworth, T, Baker, J, Hoskin, R (2019) Biodiversity net gain. Good Practice principles for development Case Studies C776b. London.

HM Government (2018) *A green future: our 25 year plan to improve the environment* , Department for the Environment , Food and Rural Affairs, London, UK

Panks, S. White, N. Newsome, A. Potter, J. Haydon, M, Mayhew, E, Alvarez, M. Russell, T. Scott, S. J. Heaver, M. Scott, S. H. Treweek, J. Butcher, B. Stone, D. (2021). *Biodiversity metric 3.0: Auditing and accounting for biodiversity – User Guide*. Natural England.