ECOLOGICAL ADVICE SERVICE

TO: ***Matthew Durling***

FROM: ***Emma England***

DATE: ***18 April 2024***

SUBJECT: ***22/00668/AS / Land South of M20, Aldington***

The following is provided by Kent County Council's Ecological Advice Service (EAS) for Local Planning Authorities. It is independent, professional advice and is not a comment/position on the application from the County Council. It is intended to advise the relevant planning officer(s) on the potential ecological impacts of the planning application; and whether sufficient and appropriate ecological information has been provided to assist in its determination. Any additional information, queries or comments on this advice that the applicant or other interested parties may have must be directed in every instance to the Planning Officer, who will seek input from the EAS where appropriate and necessary.

Summary - Additional Information Requested

We have reviewed the ecological information submitted in support of this application and we advise that additional information is sought from the applicant prior to determination of the planning application:

- Clarification regarding the potential impacts upon the nearby badger setts, and confirmation as to whether a Natural England badger licence will be required to carry out works; and
- More detailed information regarding the design and management strategy for skylark and lapwing to ensure that the proposed mitigations, are sufficient for the loss of breeding territories. This may include changes to the locations and management of hedgerows (*e.g.,* in terms of targeted height), and where appropriate, additional land to mitigate for the loss of the breeding territories.

Any further necessary mitigation measures will need to be submitted prior to determination of the planning application. This is in accordance with paragraph 99 of the Office of the Deputy Prime Minister (ODPM) Circular 06/2005[1] and the National Planning Policy Framework (NPPF) 2023.

[1] odpm-circ-0605.qxd (publishing.service.gov.uk)

Paragraph 99 of the ODPM 06/2005 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 NPPF sets out how '*planning policies and decisions should contribute to and enhance the natural and local environment by:…minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressure*'.

Detailed Comments - Ecological Mitigations and Enhancements

KCC EAS has several queries regarding the ecological survey methodology, in particular for water vole. However, as KCC EAS is broadly satisfied with the ecological mitigations and enhancements proposed, we do not feel it is necessary to discuss this further. Despite this, further information is requested with regards to badgers, skylark and lapwing mitigation.

If planning permission is granted, we advise that conditions securing the implementation of the ecological mitigations and enhancements contained within the submitted East Stour Solar Farm Environmental Statement (ES) Volume 2A – Written Statement, Chapter 10 (April, 2022), Badger Appendix (once satisfactorily updated) and any further relevant submitted information, are attached. The relevant mitigations and enhancements should be secured through conditions relating to:

- A Construction Environmental Management Plan (CEMP) for the site;
- Detailed ecologically sensitive soft landscaping plans along with planting details, details of enhancements such as the make/model of bat and bird boxes, and information regarding number and placement (location/height/aspect); and
- The long-term, appropriate management of created/retained habitat features on-site secured through a Landscape and Ecology Management Plan (LEMP).

We shall provide suggested wording once the additional requested information has been provided.

Badgers

Badgers are protected under the Protection of Badgers Act 1992. The exact locations of the badger setts have not been provided in the form of a plan, although they are described within the Turnstone Ecology Ecological Assessment Rev01. It is noted that works are proposed within 20m and 10m of an active badger sett. It is further noted that it is believed unlikely that badger setts will be directly damaged by works. However, the report stated that indirect disturbance related impacts are possible. A Natural England badger licence may be required for disturbance related impacts.

It is stated in the report that fence installation will take place between May/June and September to avoid impacts to breeding female badgers. However, work near active badger setts is usually licenced between July and November inclusive to avoid disturbance to breeding female badgers.

Clarification is requested regarding the potential impacts upon the nearby badger setts, and confirmation as to whether a Natural England badger licence is likely to be required to carry

out works. The exact locations of the badger setts are requested to be provided to KCC EAS for review, on a suitable plan.

Skylark and Lapwing
It is noted that mitigations are proposed in one field for up to three pairs of skylark and two pairs of lapwing. Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 places a general duty on all public authorities, including the local planning authorities, to conserve and enhance biodiversity. Lapwing and skylark are listed as species of principal importance (priority species) for conservation under Section 41 of the Act, 2006. Natural England guidance on '*Wild birds: advice for making planning decisions',* published 14 January 2022, states '*you must have regard for the conservation of Section 41 species as part of your planning decision*.'

It should be noted that Royal Society for the Protection of Birds (RSPB) advice contained within '*A management guide to birds of lowland farmland'* (Winspear and Davies, 2005) suggests that '*lapwings generally avoid nesting in enclosed fields of less than 5 ha or close to field boundaries that can harbour predators, or in an area in the immediate vicinity of trees or other features that can act as predator perches*.' The guide further indicates that '*skylarks generally avoid small fields. The best fields to use are ones of at least 5 ha if bounded by open field boundaries or short hedges, or fields of at least 10 ha if bounded by tall hedges or woodland*.' The amount of usable space within the proposed mitigation area for these birds is suggested by Kent County Council Ecological Advice Service (KCC EAS) to be around 5 ha, with a tall existing hedgerow to the west, and proposed tall hedgerows to the north and east.

More detailed information is requested regarding the design and management strategy for skylark and lapwing to ensure that the proposed mitigations, are sufficient for the loss of breeding territories. This may include changes to the locations and management of hedgerows (*e.g.,* in terms of targeted height), and where appropriate, additional land to mitigate for the loss of the breeding territories.

Bats
It is understood that lighting is not required during operation of the site; if this changes, then a bat sensitive lighting strategy will be required to demonstrate that any potential impacts upon bats have been effectively mitigated for. A bat sensitive lighting strategy should consider guidance provided by the Institute of Lighting Professionals and the Bat Conservation Trust[2].

If you have any queries regarding our comments, please do not hesitate to get in touch.

Emma England
Biodiversity Officer

[2] Guidance Note 8 Bats and Artificial Lighting | Institution of Lighting Professionals (theilp.org.uk)

This response was submitted following consideration of the following documents:

Engena (Undated) SEI Chapter 10 - Ecology.

Engena (April, 2022) East Stour Solar Farm Environmental Statement (ES) Volume 2A – Written Statement, Chapter 10.

Engena (April, 2022) East Stour Solar Farm Environmental Statement (ES) Volume 3 – Figures 12.2 to 14.4.

Engena (April, 2022) East Stour Solar Farm Environmental Statement (ES) Volume 3 – Figures 1.1 to 12.1.

Natural England (accessed August 2022) Guidance – Wild birds: advice for making planning decisions. Available here.

RSPB (accessed August 2022) Lapwing breeding and nesting habits. Available here.

RSPB (accessed August 2022) Hay meadows. Available here.

Toepfer, S., and Stubbe, M. (2001) Territory density of the skylark (Alauda arvensis) in relation to field vegetation in central Germany. Journal of Ornithology, 142(2): 184-194.

Winspear, R., and Davies, G (2005) A management guide to birds of lowland farmland. The RSPB, Sandy.