Date: 21st February 2024
Ref: 23/01363
Site address: Goshall Valley, East Street, Ash

Miss Rachel Morgan
Dover District Council
By email only developmentmanagement@dover.gov.uk

Kent Wildlife Trust

Dear Miss Morgan,

RE: Application Ref. 23/01363 – Construction of a solar farm with associated access and infrastructure.

Summary:

Kent Wildlife Trust object to the proposed development.

The submission fails to properly consider the movement of wintering birds from the designated sites at Sandwich Bay and Stodmarsh. Nocturnal surveys have not been carried out and the surveys that have been provided fail to consider the change in tide at Sandwich Bay. In addition, insufficient information has been provided to clearly establish how the development will impact on wintering bird species using the proposed 'nature restoration area'.

The proposed development will result in the loss of skylark territories. Insufficient information has been provided to demonstrate how this loss will be mitigated. The loss of skylark territories will also impact on other ground nesting bird species and those which forage on arable land.

The proposed development, particularly during the construction phase, risks causing a level of disturbance to otter that could prevent them from using the site for commuting, hunting, or resting thereby reducing their range. Insufficient information has been provided to address this. Beaver surveys should be undertaken to establish whether they are using the site and to inform appropriate mitigation measures.

Given the site's designations, and its proximity to designated areas which are of invertebrate interest, invertebrate surveys should be carried out of the ditch network and submitted prior to determination of the application.

The proposed separation distance from the ditch network to the solar infrastructure and security fencing is too narrow to remove the risk of impacts from construction. There is no mitigation plan put forward in the CEMP to address construction impacts to the ditches from issues such as pollution, particularly through sediment run-off, or the works leading to the collapse of the ditch banks.

Site Designations and Protected Species

The application site is situated within the Ash Level and South Richborough Pasture Local Wildlife Site (LWS). The citation for the LWS states that the site comprises an extensive area of low-lying agricultural land with inter-connecting dyke systems, mostly situated to the south of the River Stour. The ditch network within the application site and its associated fields meets the definition of Coastal and Floodplain Grazing Marsh, a Habitat of Principle Importance.

The citation lists protected, priority and red list bird species such as curlew, lapwing, skylark, Cetti's warbler, yellowhammer, and marsh harrier that have been recorded within the LWS. Mammals recorded from the site include brown hare and water vole. Viviparous lizard, grass snake and slow worm have also been recorded along with an important assemblage of 12 species of dragonflies, 22 species of common butterfly, and the shining ramshorn snail.

The application site is situated approximately 1.6km from the Sandwich Bay Special Area of Conservation (SAC), the Thanet Coast SAC, the Sandwich Bay and Thanet Coast Special Protection Area (SPA) and the Sandwich Bay and Thanet Coast Ramsar. Approximately 6.9km from the site is the Stodmarsh SAC, SPA, Ramsar and Site of Special Scientific Interest (SSSI) while within 2km of the site is the Sandwich Bay to Hacklinge Marshes SSSI.

Planning Framework

National and local policy require that development safeguards and enhances the environment.

National Planning Policy Framework

Section 15 of the National Planning Policy Framework (2023) (NPPF) sets out the Government's current planning policy in relation to conserving and enhancing the natural environment.

Paragraph 180 of the NPPF states:

'Planning policies and decisions should contribute to and enhance the natural and local environment by:
a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan); [...]
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;
e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans'.

Paragraph 186 of the NPPF sets out that:

'When determining planning applications, local planning authorities should apply the following principles:
a) If significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated or, as a last resort, compensated for, then planning permission should be refused;
b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted.'

In addition to the above, Part D of the paragraph sets out that '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'.

Paragraph 188 of the NPPF is clear that the presumption in favour of sustainable development does not apply where a development is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects) unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.

Relevant Development Plan Policies

It is considered that Policies CP7 and DM15 of the Core Strategy (2010) and Policies ANP1 and ANP4 of the Ash Parish Council Neighbourhood Development Plan (2021) are relevant in this instance.

Policy CP7 of the Core Strategy relates to the protection and enhancement of the existing network of green infrastructure within the district. The policy states that permission for developments which introduce additional pressure on the existing green infrastructure network will only be granted where those developments 'incorporate quantitative and qualitative measures, as appropriate, sufficient to address that pressure'.

Policy DM15 of the Core Strategy states that developments which impact on the character or appearance of the countryside will only be permitted where, amongst other criteria, it does not result in the loss of ecological habitats.

Policy ANP1 of the Ash Parish Council Neighbourhood Development Plan requires development proposals to have regard to the purpose of conserving and improving the physical surroundings and the natural beauty of the designated site. Developments should also respect the natural environment within the designated site and adjacent land by

enhancing and re-connecting the existing natural features such as veteran trees, hedges, protecting wildlife corridors/ watercourses.

Policy ANP4 of the Ash Parish Council Neighbourhood Development Plan states that developments should provide biodiversity net gains of not less than 10% (as set out by the DERFA metric) at all stages of the mitigation processes. Developers must demonstrate that they have followed the mitigation hierarchy.

Policy ANP4 also requires new developments to maximise the benefits for biodiversity while ensuring there is no detriment to the Sandwich Bay and Thanet Coast SPA, SAC and Ramsar sites, the Pegwell Bay NNR and the Stodmarsh SSSI.

Part 3 of Policy ANP4 states that developments should seek to avoid any harm and to minimise any adverse impact upon the local biodiversity, habitats, and wildlife. Where necessary and appropriate, proposed developments should demonstrate that the conservation of protected and rare species will be maintained, including that of their foraging habitat. Compensatory provision elsewhere should be the last resort and used only if the development demonstrates an overriding benefit to the local community.

Parts 6 and 7 of Policy ANP4 are clear that developments will only be supported if they comply with the most recent mitigation strategies relating to the Thanet Coast and the Sandwich Bay SPA and Sandwich Bay SAC and evidence that they will not cause an adverse effect on the integrity of any European Site within the proximity of the Plan area.

Other Material Considerations

The Council's draft Local Plan is at an advanced stage in the examination process and so its policies should be given the appropriate weight.

Of relevance to the concerns raised within this letter is draft policy SP13 which seeks to ensure developments do not adversely affect the integrity of European designated sites, nationally designated sites, or locally identified biodiversity assets. Draft policy SP14 requires proposals to 'safeguard features of nature conservation interest, and retain, conserve and enhance habitats [...] as green and blue corridors and stepping-stones for wildlife'.

<u>Key Considerations</u>

Wintering Birds

The application site is situated close to sites which support nationally significant wintering bird populations. The supporting documents demonstrate that the application site provides suitable habitat for a range of wintering bird species. The site has been shown to be used for foraging by wintering waterbirds, including interest species of the Stodmarsh international designated sites and other populations of County importance. Six designated features of the Stodmarsh SPA and Ramsar site were recorded including shoveller, mallard, snipe, tufted duck, gadwall, and lapwing. The submission states that the peak counts of all species except lapwing exceeded 1% of the SPA population on at least one occasion, although only snipe and mallard were recorded using the Site regularly. No interest species of the Sandwich Bay and Thanet Coast SPA or Sandwich Bay Ramsar Site were recorded during the surveys.

Kent Wildlife Trust (KWT) wishes to raise concerns in respect of the wintering bird surveys that have been undertaken. It is considered that the zone of influence for the wintering bird surveys is not sufficiently wide given the proximity of the site to Sandwich Bay and Stodmarsh. The submission fails to properly consider the movement of birds on a daily basis from these designated sites and there is no discussion within the Ecological Baseline Report on how tide times at Sandwich and Pegwell Bay have influenced the movement of birds onto the application site. In addition, nocturnal surveys of the site have not been conducted and so the submission fails to take account of those bird species which forage within the designated sites and only come back to the application site to roost at night. Without these surveys being carried out a full picture of how important the site is for wintering and breeding birds cannot be accurately established.

Insufficient information has been provided to clearly establish how the development will impact on wintering bird species using the proposed 'nature restoration area' to the north / north-east of the site due to the presence of pylons

and structures proposed as part of the development. These structures risk interrupting sightlines around potential roosting sites and feeding areas for wintering bird species within the restoration area which increases the chance of those birds avoiding the site.

Breeding Birds

The Environmental Statement sets out that a total of 17 species were recorded as either 'probably or definitely' breeding on site or immediately adjacent to the site. Of these 17 species, six are red list Birds of Conservation Concern (BoCC), three are listed as amber BoCC, seven are priority species, and one is a protected species under the Wildlife and Countryside Act 1981 (as amended). The Ecology Baseline Report states that skylark and lapwing, which are priority and red list species, were commonly recorded across much of the site with peak counts of 194 for skylark and 148 for lapwing. Other ground nesting birds recorded include corn bunting and grey partridge which are also priority and red list species.

Skylark have been steadily declining in numbers since the mid-1970s and KWT are concerned about the continued loss of habitat for this and other ground nesting bird species. The application site hosts 10 skylark territories of which 5 are within the proposed 'nature restoration area'. The proposed development will therefore result in the loss of 5 skylark territories. Insufficient information has been provided to demonstrate how this loss will be mitigated aside from stating that land will be retained within the restoration area and that foraging habitat across the site will be enhanced. The loss of skylark territories will also impact on other ground nesting bird species and those which forage on arable land. Given the continued decline of skylark numbers it is not considered that the measures proposed adequately address the loss of these territories or the habitat which provides feeding areas for other farmland birds. It is therefore recommended that further measures are proposed as part of the submission. Further specific details must also be provided on what steps will be taken to ensure availability of winter food for granivorous farmland bird species.

The submission is dismissive of the importance of arable land and its role in providing habitat for a range of bird species. No details have been provided in respect of what type of arable land will be lost or how that land is currently managed. This is of relevance because arable farming practices can be hugely beneficial in providing suitable habitat for bird species, particularly over winter, and its loss should be recognised and given due consideration. For example, retaining over-winter stubbles on arable land can provide food for seed eating birds and a variety of stubble heights provide cover from predators for species such as skylark.

It is noted that no dedicated raptor or bird of prey vantage point surveys have been undertaken to identify whether the site is used by these species, particularly given that there were observations of sparrowhawk, kestrel, buzzard, marsh harrier, peregrine and barn owl during surveys of the site. The site is suitable for foraging and commuting barn owls, which are primarily a farmland species, hunting along field edges and rough grassland. The UK barn owl population has declined by 70% since the 1930's and therefore it is important to identify, protect and enhance barn owl foraging and commuting habitat.

Riparian Mammals

The application site is known to be within the daily range of otter and the Ecology Baseline Report notes that there is evidence of otter using the site but states that they are unlikely to be breeding on site. The proposed development, particularly during the construction phase, risks causing a level of disturbance to otter that could prevent them from using the site for commuting, hunting, or resting thereby reducing their range. This level of disturbance could constitute an offence under the Conservation of Habitats and Species Regulations (2017) and the Wildlife and Countryside Act (1981) (as amended) even if otter do not breed within the site.

Figure A3 within the Ecology Baseline Report identifies the location of possible entry trails from otter into the ditches as well as stretches of the network where evidence of water vole has been found. The proposed separation distance from the solar infrastructure and security fencing to this section of the ditch network (along the north / north-west of the site) is very narrow and considered to be insufficient given the impact that construction could have on protected species which rely on the ditches.

Beaver are known to be present along the River Stour. Taking this into account, together with the location of the site and its ditch network, it is considered that surveys should be undertaken to establish whether there will be an impact

on this species. In October 2022, beavers were added to Schedule 2 of the Conservation of Habitats and Species Regulations 2017 (the same protection offered to bats, dormice and otters). Beaver surveys should be undertaken by suitably licensed ecologists/experts who have experience working with beavers. The results of the surveys should inform mitigation and if necessary, a licence from Natural England. KWT, who have worked closely with the Beaver Trust, the East Kent Beaver Advisory Group (EKBAG) and have our own inhouse licensed ecologists (a licence is required to survey burrows, dams, and lodges) are happy to discuss this species in more detail with the applicant and their ecologists to provide guidance and advice. We recommend that the surveys are undertaken before a decision is made, so an assessment of the likely impacts the development will have can be understood. Beavers are now part of our wild biodiversity in East Kent, and all planning applications along or near waterways should be including the species within their impact assessments and protected species surveys.

Invertebrates

The application site falls within the Kent Downs and Stour Valley Important Invertebrate Area (IIA)[1] and a LWS which contains Coastal and Floodplain Grazing Marsh (CFGM) and a botanically rich ditch network that provides habitat for a range of invertebrate species. Despite these designations no aquatic invertebrate surveys have been carried out. The Environmental Statement has scoped out invertebrates as Species of Principle Importance due to the predominant arable and species poor grassland habitats. This approach fails to consider of the importance the grassland habitat plays in connection with the wetland features of the application site and how this could support protected and priority species.

Given the site's designations, and its proximity to designated areas which are of invertebrate interest, it is advised that invertebrate surveys are carried out of the ditch network and submitted prior to determination of the application. This will provide a full understanding of the impact of the development, provide appropriate mitigation measures where appropriate, and inform any future site management.

The submission does not put forward any measures to address the impacts of the solar panels on invertebrates. Certain aquatic invertebrate species mistake polarised light reflected off solar panels for open water which leads them to attempt to lay eggs on the panels. The proximity of wetland habitats which are of importance to invertebrates heightens the need to mitigate this impact. It is advised that a pattern of roughened or painted glass or a horizontal light blocking grid are used to ensure the solar panels are not attractive to aquatic invertebrates. These measures are low cost and do not impact on energy generation[2]. In the event planning permission is forthcoming these measures should be secured by condition.

Goshall Stream and Ditch Network

As discussed above the proposed separation distance from the ditch network to the solar infrastructure and security fencing is too narrow to remove the risk of impacts from construction. While it is acknowledged that the Construction Environmental Management Plan (CEMP) is outline at this stage it is nonetheless a concern that there is no focus on the mitigation hierarchy in respect of the ditches. There is also no mitigation plan put forward in the CEMP to address construction impacts to the ditches from issues such as pollution, particularly through sediment run-off, or the works leading to the collapse of the ditch banks.

Biodiversity Net Gain

The submitted Biodiversity Net Gain Strategy and metric sets out that the arable land will be replaced with grassland (as part of the floodplain wetland mosaic and CFGM) which will achieve a moderate condition. It is unclear whether the area of grassland under the solar arrays can count as part of the net gain calculation given that it will have structures above it. In the event this area of land can count towards the net gain it is considered unlikely that a moderate condition level can be achieved and maintained for these areas. No details have been provided to demonstrate how this condition score will be achieved in practice or whether the arable land is suitable to enable this habitat change.

[1] Important Invertebrate Areas

[2] A Review of the Impact of Artificial Light on Invertebrates

The submission states that the proposed grassland will largely be managed by grazing. The timing and density of grazing is of importance to maximising the availability of nectar and food-plant resources for invertebrates. It is understood that the grazing regime for management is yet to be finalised. Therefore, we urge that an appropriate conservation grazing management plan is required by condition as part of a detailed Landscape and Ecological Management Plan to ensure that there is the maximum benefit for invertebrates.

The Biodiversity Net Gain Strategy proposes to create smaller areas of CFGM outside the perimeter of the solar array fence. These areas are to be planted with a species-rich grassland seed mix and managed by rotational cutting instead of grazing to try and develop a tussocky sward and expand the existing botanically diverse ditch banks. It is advised that natural regeneration of the grassland should be allowed following construction work to ensure the grassland within these areas develops its characteristic species. It is also advised that a locally sourced seed stock taken from wildlife-rich sites is used for sowing the grassland areas rather than a commercial seed mix due to the sensitive nature of habitats within and adjacent to the application site. Herbicides or pesticides should not be used, even in exceptional circumstances.

Other Matters

The application site is known to support brown hare and it is likely that it also supports hedgehog, both are priority species. The submission provides very little detail on how impacts to these species will be mitigated aside from stating that the solar array fencing will incorporate mammal gates. Detailed mitigation measures for brown hare and hedgehog should be provided.

I hope that the detail within this letter proves to be useful in your assessment of this application. If you have any questions, please do not hesitate to contact me.

Yours sincerely,

Nicholas Trower
Planning and Policy Officer
Kent Wildlife Trust
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