CGO Ecology Ltd 27a Ridgefield Gardens Christchurch Dorset BH23 4QG UK

ECOLOGY

Rebuttal

Dr Chris Gleed-Owen,
Director & Principal Ecologist,
CGO Ecology Ltd

21/01028/OUTMAJ

APP/D2320/W/22/3295556

Project: MoJ NPP Garth Wymott 2

Our reference: ALRZ REB

Author:	Dr Chris Gleed-Owen BSc (Hons) PhD MCIEEM	

(+44) 01202 798126
enquiries@cgoecology.com
www.cgoecology.com

Registered Company in England and Wales, number 6532052
Registered office: Suite 8 Bourne Gate, 25 Bourne Valley Road, Poole, Dorset, BH12 1DY, UK

Contents

1. Introduction

1.1. This Rebuttal document has been prepared by Dr Chris Gleed-Owen in response to the Proof of Evidence of Ulnes Walton Action Group (UWAG) in relation to ecology. The evidence that I have provided for this appeal is true. It has been prepared in accordance with the guidance of my professional institution, the Chartered Institute of Ecology and Environmental Management (CIEEM) of which I am a full member. I confirm that the opinions expressed represent my own professional judgement.

2. Rebuttal of UWAG Planning Proof of Evidence

2.1. The Planning Proof of Evidence (PoE) submitted by Jackie Copley of UWAG (Core Document G1) has content relevant to ecological matters from paragraphs 8.18 to 8.28.

2.2. Paragraph 8.20 states: "Although mitigation may mean replacement, the benefits will not be experienced for decades." In response, I must point out that this is already factored into the Biodiversity Net Gain (BNG) calculations, and that the score has been weighted down accordingly. Biodiversity Metric 2.0 used for the BNG calculations contains algorithms and habitat-trading mechanisms which take into account any lag effects and delivery risks. Some habitats can be created within one year; others such as woodland can take 30 years to mature.

2.3. Without lag-times and delivery risk being weighted down, the BNG score would be much higher. This potential flaw was identified and dealt with early in the BNG development process. The use of the Biodiversity Metric to calculate BNG scores is now national policy, led by Defra, and already widely adopted in advance of becoming law.

2.4. Furthermore, in the Statement of Common Ground (SoCG) (Core Document C8, paras 5.37-5.43), UWAG accepts our use of Metric 2.0 and our BNG calculations, and it agrees that the proposed mitigation is "broadly acceptable".

2.5. Paragraph 8.23 incorrectly states that water vole is present at the site. Our surveys in 2021 and 2022 have found no evidence of current presence of this species. Pink-footed goose has not been recorded in our recent Breeding Bird Survey (Core Document E8), but we cannot confirm or deny its presence as a wintering species. However, the number, size, and quality of ponds on site are inferior to those present at the Prince Albert Angling Society (PAAS) north of HMP Garth (forming part of the Ulnes Walton Biological Heritage site). According to UWAG, large numbers of pink-footed goose have been reported at the PAAS ponds (Core Document G4f). It is noteworthy that these ponds, which are only 50-200m from HMP Garth, support such a large population and diversity of wetland birds.

2.6. Paragraph 8.24 incorrectly states that any Priority Habitats and Priority Species "such as amphibians will need to be relocated". Whilst some habitats can be translocated, this is rarely done except for irreplaceable habitats such as ancient woodland soil. No such habitats are affected, and the single pond lost to the new prison does not constitute the quality criteria for the UK Priority Habitat 'Ponds'.

2.7. Furthermore, no amphibians will need to be translocated for this project. Great crested newt (GCN) is the only strictly-protected amphibian on site, and it will be safeguarded by Reasonable Avoidance Measures (RAMs) during construction of the bowling green. Common toad conservation status will be protected by pond and terrestrial habitat creation in the BNG areas to the south and west of the wider site, in advance of habitat loss associated with the new prison.

2.8. Paragraph 8.25 states: “Although I accept that eventually the residual effect will be 20% BNG, there would be harm arising to ecology in the short term”. My response is that most of the mitigation and compensation measures will be provided in advance of the loss and degradation of the respective ecological receptors.

2.9. There will be no short-term residual loss for most receptors. I acknowledge that my PoE note (document E2b) may not have made this clear. The only receptor that will experience a short-term residual impact is breeding birds. I will set out below the relevant ecological receptors for which mitigation will be provided in advance, and a summary of the respective mitigation.

2.10. Bat roosts in buildings B10 and B15 (Core Document E2b, section 2.2) - The common pipistrelle maternity roost and hibernation roost in B15, and the common pipistrelle occasional summer day roost in B10, will be safeguarded by precautionary measures prior to and during construction. These Reasonable Avoidance Measures (RAMs) will ensure that no offence under the Habitats Regulations 2017 (as amended) occurs, and that a Natural England mitigation licence is not required.

2.11. The bat mitigation measures agreed and/or being considered include road realignment, acoustic barriers, seasonal avoidance, electric vehicles, optimisation of logistics movements, and bat-sensitive lighting. This will minimise disturbance to a negligible level, and avoid the need for a mitigation licence. These measures will be implemented via carefully-worded planning condition and Construction Environment Management Plan (CEMP).

2.12. No bat roosts are present in the woodland, trees, or buildings to be lost. Therefore, no compensation is required, and a Natural England mitigation licence will not be necessary.

2.13. Bat activity (Core Document E2b, section 2.3) – The loss of bat foraging and commuting habitat will be offset by compensatory provisions in the BNG areas to the south and west of the site, provided in advance. These measures comprise grassland reversion, removal of grazing and other agricultural activity, new woodland and hedgerow planting, and pond creation. The BNG areas will become much more attractive to bats than they are now, fully compensating the loss of woodland in the new prison footprint in the short to medium term, and enabling no short-term deficit of foraging habitat. This assertion is corroborated by survey evidence from 2022 showing that nearly all of the 200 or so bats emerging from B15 fly south and southwest, rather than north and northeast to the new prison footprint (Core Document A12).

2.14. As an enhancement for bats, but also to encourage use of areas well away from the new prison construction site, at least 20 batboxes will also be installed in advance in suitable undisturbed locations around the wider site. The full details will be presented in the CEMP in adherence to the relevant planning condition.

2.15. Other mammals (Core Document E2b, section 2.4) – In relation to the herd of unusually-pale fallow deer on site, we will operate a set of RAMs during construction, to avoid harm. Fallow deer is not a ‘protected species’, therefore no other mitigation or compensation is required. Similarly, in relation to hedgehog, we will have RAMs in place to avoid harm, and we will provide 10 artificial ‘hedgehog homes’ in undisturbed areas of the wider site, in advance of enabling works. Again, the CEMP will detail these provisions.

2.16. Barn owl (Core Document E2b, section 2.5) – An alternative nestbox has already been provided in B10 to replace the one which will be lost from B11. Sufficient alternative foraging habitat is available in farmland to the north and east to absorb the loss of land to the new prison. BNG provisions to the south and west of the wider site will also be provided in advance, to compensate the loss of grassland.

2.17. Breeding and wintering birds (Core Document E2b, section 2.6) – The habitat planting and grassland in the BNG areas to the south and west of the wider site will be planted, reverted, and enhanced in advance. This will make these areas suitable for a wider range of bird species than the site supports currently. Six new ponds alone will provide a significant uplift in local habitat for wetland birds such as pink-footed goose. The lightly-managed grassland in the BNG areas to the south and west will allow wintering and breeding of Red-List species such as lapwing.

2.18. There will be a short-term residual shortfall of natural breeding bird habitat for common species in the prison footprint, including Amber-List tawny owl. Alternative nesting provision, in the form of nestboxes (number and types to be agreed via planning condition), targeting an appropriate range of species, will be provided in advance in suitable undisturbed areas of the wider site.

2.19. Nestbox provision will compensate most of the nesting habitat loss, but not all. Nor will it compensate the short- to medium-term shortfall in area available for foraging and breeding territories. This is the only element of the mitigation package that cannot demonstrate the absence of short-term residual impact.

2.20. Woodland and hedgerow planting will eventually fully offset the breeding bird habitats lost to the new prison. The impacts of the interim lag period are dealt with by habitat trading mechanisms in the Biodiversity Metric 2.0, which down-weights the BNG score accordingly.

2.21. The 2022 Breeding Bird Survey (Core Document E8) did not identify any new considerations to be incorporated into the proposed mitigation.

2.22. Regarding breeding birds, seasonal avoidance and other RAMs will be in place to protect birds and nests during site clearance and construction. Therefore, there will be no short-term impact on conservation status due to avoidable impacts.

2.23. GCN (Core Document E2b, section 2.7) – RAMs will be used to avoid harm to GCN during construction of the bowling green. Should an impact be unavoidable, the Appellant will enter the DLL scheme for GCN, which involves offsetting in advance of impacts. No impact on GCN is anticipated from the new prison or boiler house. Continued GCN absence from the new prison footprint has been established in 2022 (document E9). Pond creation and terrestrial habitat enhancements in advance of construction will ensure no short-term impact on the status of other amphibians.

2.24. Fish (Core Document E2b, section 2.9) – RAMs will be in place to safeguard European eels in the unlikely event that any are encountered during construction.

2.25. Invertebrates (Core Document E2b, section 2.10) – Habitat compensation in the BNG areas to the south and west of the wider site will be provided in advance. No other mitigation is proposed.

2.26. Invasive Non-Native Species (INNS) (Core Document E2b, section 2.11) – An eradication programme for Himalayan balsam is running from 2021 to 2024. Other INNS plants will be removed prior to site clearance.

2.27. Paragraph 8.25 states: "Due to resource constraints in most local planning authorities as a result of Government Austerity measures, enforcement capacity is severely limited." This is speculative. Judicial review assumes that policy and due process will be followed.

2.28. Paragraph 8.27 reiterates UWAG's view that short-term harm to biodiversity will occur. Paragraph 8.28 suggests that "this should be attributed moderate weight". I refer back to my statements above.

3. Rebuttal of UWAG Alternative Sites and Socio-Economic Proof of Evidence

3.1. The Alternative Sites and Socio-Economic PoE submitted by Paul Parker of UWAG (Core Document G9) has content relevant to ecological matters from paragraphs 37-38 and in Appendices 5 and 6 (Core Documents G14 and 15).

3.2. Paragraph 37 refers to a letter from Fylde Bird Club presented in Appendix 5 which shows that pink-footed goose (an Amber-List species) is absent from the alternative site option at Kirkham.

3.3. Paragraph 38 contrasts this with records of "3000 Pink Footed Geese between 2020 and 2022" at 'Wymott Ponds' (aka the PAAS ponds north of HMP Garth). In response, I reiterate that we have not recorded pink-footed goose on the Appellant's land at HMP Garth and HMP Wymott, and that the PAAS ponds are likely to provide more attractive habitat. It is my opinion that the presence of pink-footed geese at 'Wymott Ponds', outside the site, is irrelevant to the new prison proposal which will not impact them.

3.4. Appendix 3 mentions "Established Barn Owl and Bat Roosts will be required to be relocated, alongside disturbance of Great Crested Newt colonies" for the Appeal site. This is incorrect. A barn owl roost in building B11 will be relocated, but no bat roosts are being relocated, and the GCN colony on the Appellant's land will not be affected. Even if it were, we would pursue a District Level Licence to fully offset it. We believe the potential impacts to be manageable via RAMs, and we have the support of GMEU in this.

3.5. For Kirkham, Appendix 3 states: "No evidence of Pink footed Geese foraging, or consistent Barn Owl presence". For Oldham, Appendix 3 presents no ecology information. In fact, Katrina Hulse's Alternative Sites Rebuttal (Core Document E10) shows that the Appellant has conducted ecological surveys which identified comparable or more significant ecological receptors at the alternative sites.

Conclusion

3.6. The Planning PoE submitted by UWAG argues that the proposed mitigation will take decades to mature. However, this is fully accounted for in the BNG calculation process. The SoCG confirms UWAG's acceptance of the proposed mitigation and BNG process. UWAG's statement that water vole is present is incorrect. UWAG claims that there will be a short-term loss of ecology receptors. In fact, most of the mitigation will be provided prior to the loss of existing habitats.

3.7. UWAG's Alternative Sites and Socio-Economic PoE presents irrelevant data on pink-footed goose, a species that is not present on the Appeal site. It also incorrectly states that a bat roost will be translocated, and that GCN will be impacted. The Appellant has gathered ecological evidence from the alternative sites which shows that comparable or greater ecological receptors would be impacted there.