

## **BIODIVERSITY: Regulation 18 report – July 2020**

*Note: all images in this report were taken in Capel*

### **FOREWORD**

This report has been prepared using objections raised by Save Capel at the Regulation 18 consultation by the Biodiversity, Landscape and Heritage Team. The team has now been split into two entities (Biodiversity & Pollution and Landscape & Heritage) but is still made up of local residents, all of whom concerned at the devastating loss of countryside and wildlife habitat Tunbridge Wells Borough Council's (TWBC) draft Local Plan would entail.

The Team have many concerns about the proposed developments, some of which cross-over into other subject matters, including the settings of our historic buildings and farmsteads, the loss of highly productive agricultural land and the danger posed to the health and well-being, even existence, of a close rural community. However, this report will concentrate solely on the significant and catastrophic threat to our local fauna and flora.

The intention is to assist the Save Capel campaign persuade TWBC to look elsewhere for more suitable locations for their housing needs, particularly brownfield sites, including in Capel, and the urban generation that is so needed in our stagnant towns, including Tunbridge Wells itself.



Grass snake: Capel

### **BIODIVERSITY RECORDS**

Whilst there are various organisations that maintain wildlife records of the area, these are centralised in the **Kent & Medway Biological Record Centre** (KMBRC). It is to this body that developers turn to when assessing and investigation fauna and flora in our area, in what is called a 'desk top survey'.

At the start of the Save Capel campaign, links were forged with the **Campaign for the Protection of Rural England** (CPRE) who advised;

*"People need to be much more proactive and record every bit of flora and fauna from earwigs to bats, dormice and orchids, trees and how old with the Kent and*



## SAVECAPEL

*Medway Biological Records Centre (KMBRC)... If no flora and fauna has been recorded then none will be flagged up. The developer then sends in their own ecologists and as the ecologist is under the payroll of the developer it's not in their interest to find dormice, bats, great crested newts or early spider orchids for example, as this can delay a development and cost...a lot in mitigation etc. and in some rare cases prevent a development from even going ahead."*

Examination of KMBRC records shows a sparsity of data for the areas. This is not due to a lack of biodiversity, but more likely a previous lack of developer interest in the areas. When development opportunities arise, records tend to inflate as compulsory biodiversity checks are run by ecologists. However, the rigorous nature of those checks may depend upon the level of recorded data; the more evidence already exists, the closer a developer will need to look into the area to confirm and consider mitigation. As the CPRE state, if a species is not recorded there is an opportunity not to find it.

**Conclusion:** Recording such data is important to the campaign, and more needs to be done to ensure residents and visitors note what they see, and where, so that the team can forward the information to the KMBRC.

A link to the KMBRC wildlife records is at **Annex A**, with a completed sample and information on how to complete and forward your data.

## CUMULATIVE IMPACT ASSESSMENT

Capel Parish totals 5228 acres, including Five Oak Green<sup>1</sup>. The proposals would see development on 600 acres, or over 11% of the Parish, to accommodate 4300 homes, or a third of the entire Borough's supposed housing requirements. Paddock Wood is targeted for thousands more, bringing the total in one area to over 60% of the Borough's development plans. The proposals will effectively merge Tonbridge with Tudeley (CA1) in the west, Tudeley with Five Oak Green, and Five Oak Green with Paddock Wood (CA2) in the east, creating an urban sprawl across a rural Parish, all of which is in the Metropolitan Green Belt. The problem is exacerbated by Kent County Council (KCC) authorising gravel extraction in Capel and placing a further 200 acres at risk, from east of Hartlake Road at Tudeley stretching across the Parish to the A228 at Whetsted. (The area to be excavated belongs to the same landowner as the land at CA1). With additional plans for a Colt's Hill by-pass being considered, Capel will lose at well over 15% of its countryside to development of one type or another. This cannot fail to have a serious and negative impact on the area's fauna and flora.

Save Capel argue a Cumulative Impact Assessment is needed, encompassing the TWBC proposals and KCC extractions. The environmental impact is likely to be far greater than if each proposal is considered in isolation, but TWBC continues to view the developments as separate, and neither Borough or County councils have discussed the impact of their plans upon the parish. However, it must be apparent that any such assessment would demonstrate that the proposals, if viewed together, would impact significantly on the parish as a whole. This would

---

<sup>1</sup> Capel Parish Plan 2006



## SAVECAPEL

be true not just for biodiversity, but for other matters, such as flooding, the historic landscape, pollution, and so on.

**Conclusion:** The campaign needs to press more forcibly for a Cumulative Impact Assessment for the TWBC proposals and KCC permissions.

## PLANNING POLICY

**National Planning Policy Framework (NPPF):** specifically mentions biodiversity as a significant consideration (paragraphs 174, 175 & 177), and states plans should secure 'measurable net gains for biodiversity'. If significant harm cannot be avoided or adequately mitigated, planning should be refused. The same is true if there is loss or damage to 'irreplaceable habitats', including ancient woodland. Moreover, a plan cannot be sustainable if it '...is likely to have a significant effect on a habitats site...' or '...integrity of the habitats site.'

These needs were left vague in the draft Local Plan. In terms of 'measurable net gains for biodiversity' there is nothing of substance, which suggests any promise of 'net biodiversity gain' may be cosmetic in nature.

Moreover, to justify any loss in habitat, let alone release of green belt, there has to be 'wholly exceptional circumstances', but TWBC's argument appears to rely on the need for housing itself as the circumstance justifying the Capel proposals.

Other regulations and guidance exist to ensure environmental protection, such as the **Tree Health Resilience Strategy 2018** to increase and encourage healthy woodland. DEFRA's **Biodiversity 2020: a strategy for England's wildlife and ecosystem services** aims to '...halt overall biodiversity loss, support healthy well-functioning ecosystems and establish coherent ecological networks.' The **Global Agreement for the halt of biodiversity loss 2010–20** set an ambition to halt overall loss of England's biodiversity, and is mirrored by the **EU Commission's Biodiversity Strategy 2010–20** and the **UN Convention on Biological Diversity: Strategic Plan Targets for 2020**.

**Conclusion:** It remains to be seen how effective the strategies are, and whether TWBC has properly considered their environmental responsibilities, or is skirting around them. Promises of net biodiversity gain will need rigorous examination.



View of CA1 from Crockhurst Street

The area is home to a number of endangered species, including EU protected species and a number of birds considered Species of Principal Importance and / or Red List Birds of Conservation Concern.

**EU protected species**

**GREAT CRESTED NEWTS:** KMBRC shows GCN in Tudeley and East Capel, and will also exist in the areas of gravel excavation. Significant measures need to be put in place pre-development, such as translocation and additional mitigation.

**DORMICE:** nest tubes have been seen around the proposed quarry sites and an ecology report produced by Pleydell Smithyman in 2018 confirmed the presence of the species across the area. The same report (commissioned as preparation for quarrying approval) identified that the surrounding area provided ‘...optimal habitat for dormice.’<sup>2</sup> The dormice will use hedgerows to migrate into Tudeley. KMBRC already has records of dormice in East Capel and Foal Wood.

**BATS:** KMBRC records show four species in the areas (**common pipistrelle, soprano pipistrelle, brown long-eared and noctule**); all EU protected; see **Annex B** ‘Recorded bat roosting locations: Capel.’

**BADGERS:** also an EU Protected Species but all data is highly sensitive and cannot be revealed here. However, the Badger Trust confirm there are badgers in the area. If you would like to assist their efforts to protect one of the UK’s best loved animals, please visit [www.badgertrust.org.uk](http://www.badgertrust.org.uk) .

The presence of these species requires mitigation licenses from Natural England for development to go ahead. For each license application developers need to provide a 'reasoned statement'; which needs to state why development must go ahead in these locations, and why suitable, less damaging alternatives are not available with less of an impact on wildlife.

Other mammals include deer, foxes, hedgehogs, shrews, stoats and voles; and reptiles such as slow worms, grass snakes, toads, frogs and lizards. There is a wide variety of insects upon which many animals and birds depend.



Great Crested Newt and Common Toad: All Saints Church



Slow worm: Sherenden Lane

<sup>2</sup> P15: Pleydell Smithyman: STONECASTLE FARM QUARRY – PRELIMINARY ECOLOGICAL APPRAISAL

## **Birdlife**

Kent Ornithological Society Records (which feed KMBRC data) show the following for the CA1 site:

- 70 species of birds regularly rely upon the Tudeley site, over winter or during the breeding season.
- 53 bird species are considered to breed within the proposed site.
- 12 breeding species are **Species of Principle Importance** as listed in the Natural Environment & Rural Communities (NERC) Act 2006.
- 10 species breeding within the site are also on the **Red List of Conservation Concern**<sup>3</sup>, the highest conservation priority, largely due to significant population decline as a result of habitat loss and change in agricultural practices.

Yellowhammer, linnet and skylark (all Species of Principle Importance and Red List) occur within the proposed site in high densities, and all three species are undergoing significant population declines. The proposals can only exacerbate this decline through the loss of suitable fields. Indeed, with the proposals and gravel excavations, habitat will be squeezed from all sides, leading to a further and inevitable decline in numbers; a loss not just for the area but nationally.

Four species of owl also occur in the area – Tawny, Little, Barn and Long-eared - itself an unusually diverse number. *Note: There are few long-eared owl breeding pairs recorded in Kent; any loss would be a serious conservation concern.*

### Save Capel Bird Surveys at site CA1: 21 & 22 June 2019:

Alphabetical list of bird species observed (by sight or sound).

Key: UK Red List birds: red or amber / Series of Principal Importance birds: \*

- Blackbird / Blue Tit
- Carrion Crow / Chaffinch / Chiffchaff / Collared Dove / Common Buzzard
- Goldcrest / Goldfinch / Great Tit / Green Woodpecker / Greenfinch / Great Spotted Woodpecker
- House Sparrow\* / Kestrel / Linnet\* / Magpie / Robin
- Skylark / Song Thrush\* / Starling\* / Stock Dove / Swallow / Swift
- Whitethroat / Wood Pigeon / Yellowhammer \*



Common Buzzard: Five Oak Green



Pheasant: Sychem Lane



Sparrow Hawk: Alder's Road

<sup>3</sup> <https://www.rspb.org.uk/birds-and-wildlife/wildlife-guides/uk-conservation-status-explained/>

Other species known to inhabit the area include: **Fieldfare** / Heron / Jackdaw / **Reed Bunting** / **Lapwing\*** / Little Egret / Martin (Sand & **House**) / **Meadow Pipit** / **Mistle Thrush** / **Nightingale\*** / Nuthatch / Peregrine Falcon\* / Pheasant / Red Kite / **Redwing** / Sparrow Hawk\* / **Spotted flycatcher\*** / Stonechat / **Turtle Dove\***

Several varieties of Duck, Geese, Grebe and Swan inhabit the flooded quarry pits and will be threatened by KCC's proposed excavations

**NOTE:** *the situation is broadly similar in terms of bird species in the East Capel site, where Red Kites have taken up residence. An annual breeding bird survey is conducted for the BTO and many of the key species are present in this area too.*

**Conclusion:** All of these species should be taken into consideration by a public body when performing its functions with a view to conserving biodiversity. However, there is nothing in the Local Plan to confirm such consideration. Destroying the habitats of this rich diversity of birdlife will further reduce their alarming loss and should be prevented, rather than encouraged or ignored.

### **Insects: Butterflies & Moth**

Some of the species recorded in Capel on 21 June 2019: Cinnabar Moth / Mullein Moth / Common Blue / Meadow Brown / Peacock / Red Admiral / Speckled Wood

Insects abound in the area and support the wildlife as significant food source. As diversity and scale of the insect population is reduced through development, this also impacts negatively on the area's wildlife.



Mullein Moth: Five Oak Green



Spotted Wolf Spider with eggs: Capel

## **FLORA**

Whilst a pocket of ancient woodland exists on the Sherenden Road, there is a more significant ancient woodland site in East Capel that needs protection. The AONB in Capel contains a large expanse of woodland. There is currently a healthy population of Ash trees in the parish, notwithstanding Government expenditure of £6 million on ash dieback research. Other trees include some 20 veteran oak trees on the Tudeley site alone.

Hedgerows are the roadways for much wildlife, including EU protected Dormice, and provide nesting opportunities for a number of birds, but the removal of these natural corridors has been pervasive as fields widened. Creation of large



**SAVECAPEL**

housing estates will merely increase the problem and again impact on the wildlife dependent upon them.



Greater Butterfly Orchid:  
Tudeley Woods



Trooping funnels: Amhurst Bank



Sheep's-bit: Tudeley

There are grasses and flowers and other plants in Capel that also need protection, including rare orchids (such as the Greater Butterfly above, which is 'Near Threatened' on the Vascular Plant Red Data List for Great Britain) and abundant fungi in the woodlands, meadows and fields.

**Conclusion:** The scale of the proposals, compounded by KCC's excavations, will inevitably cause significant destruction of wildlife habitat and, therefore, a wholly negative effect upon the fauna and flora in the parish. Mitigation cannot hope to match, let alone better, the damage that will be caused; the proposed mitigation is vague or misguided and therefore lacks sincerity.

In a report submitted to the TW Planning & Transportation Cabinet Advisory Board on 19/08/2019, the Council's Landscape and Biodiversity Officer suggests better woodland management might mitigate the loss of habitat and achieve 'net biodiversity gain'. However, the land to be lost in Capel, and which forms the vast bulk of the borough's development plans, is primarily fields and hedgerows, so woodland management would achieve very little against the inevitable biodiversity loss. A further argument put forward suggests wider field boundaries might help mitigate the loss, evidently forgetting it is the fields that are going to disappear. It seems clear TWBC do not take the loss of habitat seriously, and mitigation is seen as a dispensable inconvenience, perhaps precisely because the destruction of such a vast area of countryside make it impossible to achieve.

David Lovell

Save Capel Executive – Chair

July 2020



## ANNEX A: KMBRC RECORDS FORM



KMBRC Recording  
Excel sheet

Please visit the KMBRC website for policies, guidance and record sheets: [www.kmbrc.org.uk/submitting-records-to-kmbrc](http://www.kmbrc.org.uk/submitting-records-to-kmbrc)  
**We have linked the Excel spreadsheet above for your use. An example is below, with our own hints for completion:**

Species Common Name (if known)	Species Latin Name (if known)	Number seen?	Seen by whom?	Verified by whom?	Date	Location (name)	Grid Reference (e.g. TQ123456)	Any comments? (whether larvae, juvenile or adult?, feeding on what?, etc.)
Swift		11	David Lovell		01.07.2020	All Saints Church, Tuc	TQ62184 45369	Flying & feeding
Kestrel		1	David Lovell		01.07.2020	All Saints Church, Tuc	TQ62184 45369	Hovering
Greater Spotted Woodpecker		1	David Lovell		03.07.2020	Lydd Farm	TQ64444 44764	
Blackcap		1	David Lovell		04.07.2020	Lydd Farm	TQ64444 44764	
Song Thrush		1	David Lovell	Xxxxx Xxxxx	04.07.2020	Church Lane	TQ63816 44573	
Green Woodpecker		2	David Lovell	Xxxxx Xxxxx	05.07.2020	Reeds Farm hop field	TQ64665 44667	Alarm calls in flight
Bank Vole		2	David Lovell	Xxxxx Xxxxx	05.07.2020	Lydd Farm	TQ64444 44764	
Yellow Hammer		2	David Lovell	Xxxxx Xxxxx	06.07.2020	Moat Farm	TQ64257 46111	Two adult males - different ends of field
Common Buzzard		1	David Lovell	Xxxxx Xxxxx	06.07.2020	Sychem Lane	TQ64110 44720	Stooping
Holly Blue butterfly		1	David Lovell	Xxxxx Xxxxx	07.07.2020	Lydd Farm	TQ64444 44764	In cob trees
Skylark		2	David Lovell		09.07.2020	All Saints Church, Tuc	TQ62184 45369	Flying and singing above field
Heron		1	David Lovell		09.07.2020	All Saints Church, Tuc	TQ62184 45369	Flying low over field to wooded pond
Swift		7	David Lovell		09.07.2020	Poacher & Partridge,	TQ62247 46142	Flying & feeding
Tawney Owl		1	David Lovell	Xxxxx Xxxxx	09.07.2020	Lydd Farm	TQ62184 45369	On roof of Oast house
Bats		5	David Lovell		09.07.2020	Lydd Farm	TQ62184 45369	At least 2 varieties - numbers vary - daily visitors
Kestrel		1	David Lovell	Xxxxx Xxxxx	10.07.2020	Sychem Lane	TQ64110 44720	Harrying the buzzard below across a field
Common Buzzard		1	David Lovell	Xxxxx Xxxxx	10.07.2020	Sychem Lane	TQ64110 44720	Being harried by the kestrel above
Peacock butterfly		1	Ian Pattenden	David Lovell	12.07.2020	Footpath to Sherender	TQ63668 46026	On flowers on footpath
Lesser Spotted Woodpecker		2	Ian Pattenden	David Lovell	12.07.2020	Lilley Farm	TQ62858 45724	On nut feeder - male & female; daily visitors
Golden-ringed Dragonfly		1	David Lovell	Xxxxx Xxxxx	13.07.2020	Lydd Farm	TQ64444 44764	Male - resting on gate
Purple Goosefoot		1	David Lovell		15.07.2020	Reeds Farm hop field	TQ64665 44667	Amongst common 'fat-hen' plants
Chiff-chaff		1	David Lovell		20.07.2020	Lydd Farm	TQ64444 44764	Dust-bathing
Sparrow Hawk		1	David Lovell		25.07.2020	Lydd Farm	TQ64444 44764	Female - hunting

### HINTS FOR COMPLETION:

**Number seen?** Make an estimate for large numbers, e.g. a flock of birds might be numbered as **c.15**

**Verified by?** If you were alone, leave this blank (KMBRC is GDPR compliant so if the person who verified the sighting is





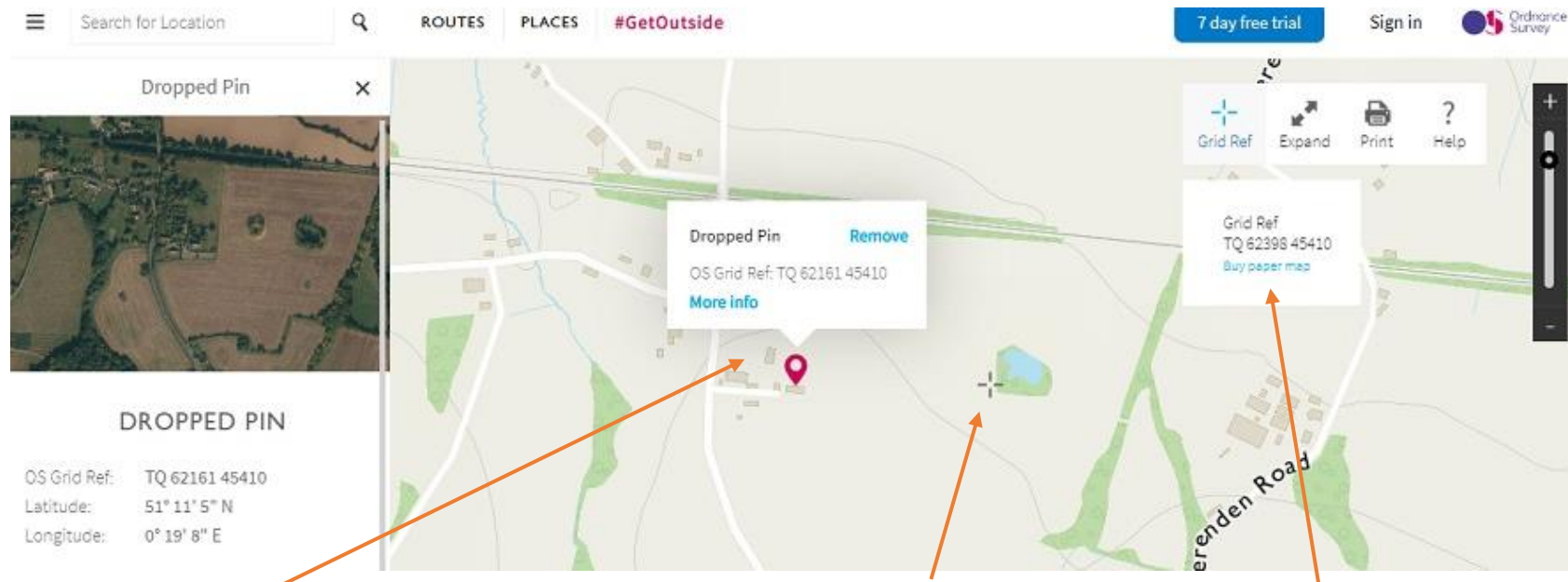
## SAVECAPEL

comfortable with inclusion, please add their name to the form).

**Place name?** If in a field use the nearest place name. If not sure, this can be found on a map.

**Grid Reference?** There are different ways of doing this, including Google Maps ***or just use a post code***. Ordnance Survey grid references can be found at [www.ordnancesurvey.co.uk](http://www.ordnancesurvey.co.uk).

As a guide, this is a link for All Saints Church, Tudeley: [www.osmaps.ordnancesurvey.co.uk/51.18492,0.31891,16/pin](http://www.osmaps.ordnancesurvey.co.uk/51.18492,0.31891,16/pin)  
There should be a 'red pin' on the Church, and Grid ref **TQ62159 45410**. In the top right of the screen is a white box – click on 'Grid Ref' and a grey cross appears on the map, with a different grid reference (**TQ62398 45410**). Here is a screen shot:



'Red pin' and grid reference for All Saints Church / 'Grid ref' cross in centre of map / Grid ref for the position of the cross:

If you move the map to the left, you can centre the cross on the Church, which will give you a new grid reference. It should be similar to the 'red pin' grid reference, but may not be exactly the same. ***OS grid references are sensitive, and alter in short distances. This is not of concern. Use the reference in the box that corresponds to the cross on your map.***



## SAVECAPEL

As you move the map the grid reference changes according to the position of the cross. For example, moving the map east to settle the cross on Badsell Manor, the grid reference changes to **TQ 65760 44739**, or similar:



Cross and grid reference for Badsell Manor, East Capel

Send your records by email – as often as you like – to KMBRC at [info@kmbrc.org.uk](mailto:info@kmbrc.org.uk) or post to: **Brogdale Farm Office, Brogdale Road, Ospringe, Faversham. Kent. ME13 8XZ.**

***NOTE: Please mark your email or posted forms with 'Data from Save Capel' and copy your records to Sharon Hunt at [sharonhunt@mac.com](mailto:sharonhunt@mac.com)***

## Annex B: Recorded Bat Roosting Locations: Capel

