

**RECOMMENDATION FOR PLANNING AND DEVELOPMENT COMMITTEE
MINDED TO APPROVE**

DATE: 6 DECEMBER 2012

REF: GT

CHECKED BY:

APPLICATION NO: 3/2012/0578/P (GRID REF: SD 375258 434458)
DEVELOPMENT OF OUTDOOR ADVENTURE CENTRE TO INCLUDE 1) TREETOP AERIAL ADVENTURE COURSE; 2) SEGWAY COURSE; 3) BAREFOOT TRAILS; 4) CHILDREN'S ADVENTURE PLAY/TRAIL; AND 5) EDUCATION/INTERPRETATION TRAILS. ERECTION OF BUILDING TO PROVIDE TICKETING, CUSTOMER SERVICE FACILITIES, TOILETS, RESTAURANT AND CAFÉ, COVERED SEATING AREAS AND ANCILLARY RETAIL SALES. CONSTRUCTION OF NEW ACCESS TO THE A671 WITH PARKING FOR 50 CARS (8 DISABLED SPACES), 5 COACHES, TOGETHER WITH CYCLE AND MOTORCYCLE PARKING AND ASSOCIATED ROADS AND LANDSCAPING. DEVIL'S ELBOW, LAND OFF WHALLEY ROAD (A671), READ, LANCASHIRE

READ PARISH COUNCIL: No objections/observations to the scheme providing there are assurances that the proposed septic tank will be sufficient for the needs of a successful business with lots of visitors.

**LCC ENVIRONMENT
DIRECTORATE (HIGHWAYS
OFFICER):** No objection in principle to this application on highway safety grounds.

**LCC ENVIRONMENT
DIRECTORATE (ECOLOGY):** Following the submission of revised plans, it has now been established that impacts on trees with the potential to support roosting bats can be avoided. The applicant has also agreed and proposed to exclude access from the ancient woodland area of the Biological Heritage Site, which seems likely to be adequate to prevent damaging impacts on the ancient woodland, river banks and associated protected species within this area of the site.

However, concern is raised regarding the likely impact upon a heronry within the centre of the site. The applicant has submitted mitigation/compensation measures in order to minimise impacts on the heronry, however it is not clear whether consideration has been given to the use of other sites/areas of woodland for the development proposals that would result in lesser ecological impacts. The NPPF indicates that in order to avoid significant harm consideration should first be given to locating the development on an alternative site with less harmful impacts (Para 118).

For this reason there is uncertainty as to whether or not the submitted measures would be adequate to avoid impacts on the heronry or that impacts on the heronry could be avoided without restricting the timing of construction and operational activities within the site. Without timing restrictions, it seems likely that the proposed development would significantly harm a feature of interest, which led to the identification of the site as a BHS.

On this basis, approval of the proposal would be contrary to Local, Regional and National Planning Policy, and the LCC Ecologist recommends refusal of this application.

**LCC ENVIRONMENT
DIRECTORATE
(ARCHAEOLOGY):**

The proposed development lies in an area of Ancient & Post-Medieval woodland as characterised in the Lancashire Historic Landscape Characterisation (HLC) programme. Such areas are of recognised historical or archaeological interest and considered to have the potential to contain features such as evidence for coppicing and pollarding, woodland boundaries and occasionally can include parkland wood features. Such areas in Lancashire have yet to be the subject of any systematic archaeological assessment and the potential of the woodland at Devil's Elbow remains to be quantified.

Any proposed works in this area therefore have the potential to encounter features associated with the Parish or Park boundary, as well as other previously unknown evidence for past woodland/parkland management. Such features would be considered of sufficient local significance as to merit recording and retention within the development. As such, should the LPA be minded to approve the development, LCAS recommend that the applicants be required to undertake a programme of assessment and recording on site.

ENVIRONMENT AGENCY:

Following the submission of amended plans, the Environment Agency now raise no objections to the scheme subject to the implementation of a number of specific conditions.

UNITED UTILITIES:

No objection to the proposed development.

NATURAL ENGLAND:

The national habitat inventories indicate that this development coincides with an area of Biodiversity Action Plan (BAP) Priority Habitat, and as such this should be considered in line with Para. 118 of the NPPF. On the basis of the information supplied, Natural England is broadly satisfied that the mitigation proposals, if implemented, are sufficient to avoid adverse impacts upon on the local population of Bats, Great Crested Newts and Otters an therefore avoid affecting favourable conservation status.

RSPB OFFICER:

Professional opinion has been sought on the Members consideration to approve this application and the likelihood of Grey Herons continuing to nest in the woodland at Devil's Elbow if proposals for the outdoor activity centre are approved.

Grey Herons are a colonial tree nesting species. The main characteristic that defines all heronries is that they are free from disturbance and as such they tend to be located in specific quiet localities, more often than not, woodlands with thick, impenetrable ground cover that are adequately owned with no or minimal public access during this pre-nesting period is most likely to result in site abandonment. They are highly traditional nesters, using the same few traditional locations year after year, probably due to the long term undisturbed nature of these sites. The largest heronries can number 200 nests but the national average is about 20 nests. Grey Herons also nest early in the year, laying eggs in February before deciduous trees are in leaf.

The proposed development will therefore almost certainly result in the loss of nesting herons at this site. The Herons would be subjected to ground and arboreal sight disturbance, especially early in the season. The associated noise would also cause aural disturbance throughout the nesting season. Put simply, a 30-50m buffer is wholly inadequate to shield the nesting birds from any disturbance. A wider buffer of at least 250m would be more appropriate, however even this is likely to result in the birds deserting the site and ultimately the loss of this traditional nesting site.

**BURNLEY BOROUGH
COUNCIL:**

No objections to the planning application.

**HYNDBURN BOROUGH
COUNCIL:**

No specific observations relating to the application.

**LANCASHIRE
CONSTABULARY
(ARCHITECTURAL LIAISON
OFFICER):**

Considering security and crime prevention at the earliest stage of the development enables it to be incorporated into the design at the earliest stage, therefore security of the buildings on this site and car parking is the areas that should be concentrated on.

**ADDITIONAL
REPRESENTATIONS:**

Seventeen letters of objection to the proposal have been received. The following highlights the reasons for objecting,

1. Neighbours not pre-consulted by the applicant,
2. Impact on highway safety,
3. Increased traffic and congestion to the area.
4. Limited public transport accessibility,
5. Highway improvements/controlling measures should be sought around the new junction if approved,

6. Speed limit needs to be reduced from 50 mph,
7. Noise impact,
8. Light pollution,
9. Impact on the Biological Heritage Site,
10. Impact on protected species/habitats on site including badgers, bats, otters, foxes, birds, deer and a heronry,
11. Impact on Sabden Brook wildlife corridor,
12. Ecology survey provided is incorrect as the site is an active site for nesting herons,
13. Footpath areas will destroy fauna in the woodland,
14. Visual impact of scheme,
15. Health and safety risk if approved,
16. Danger to horse riders who use the main road,
17. Concerns regarding litter and pollution,
18. Concern about opening hours,
19. If the scheme is approved and becomes a success, we will see more buildings being proposed,
20. Already provision of similar facilities, albeit on a smaller scale, nearby,
21. If it fails we will see empty buildings and car parking areas being a blot on the landscape,
22. If approved we will likely see an increase in other commercial ventures being applied for,
23. Approval would be contrary to the Human Rights Act.

Thirteen letters/e-mails of support for the scheme have been received. The following highlights the positive points,

1. It will be a wonderful recreational and visitor facility for the Ribble Valley and East Lancashire,
2. Any initiative that generates employment proposes an exciting place for young people to visit and get active should be supported,
3. As a resident, I am delighted that families will benefit from such an activity centre,
4. It will attract visitors to our towns so benefitting local businesses and boosting the local economy,
5. It will be a positive influence for the community,
6. It is a sensible, progressive and worthwhile proposal,
7. After the recent Olympics, this is a worthwhile venture,
8. It may even aid local education departments with access to a good recreational activity centre, and
9. Increase in profile for the area as a whole.

Proposal

The site measures 7.25 hectares in size. This application seeks permission for the development of an Outdoor Adventure Centre on land on the outskirts of Read. The scheme includes a treetop aerial adventure course (similar to Go-Ape), a Segway course, barefoot trails, children's adventure play/trail and education/interpretation trails within woodland. The proposal

also includes the associated coach and car parking, and associated buildings (gross floor area of 430sqm) to provide ticketing, customer service facilities, toilets, restaurant and cafe, covered seating areas and ancillary retail sales. The scheme also includes the construction of the formal vehicular access to the site from the A671, associated internal roadways and proposed highway and accessibility improvements. The scheme will create a minimum of five jobs, however dependant on the end site owner/user, this could increase somewhat. The application has been subject to Pre-Application discussions.

Site Location

The site lies within open countryside adjacent to the A671 between Read and Whalley, approximately 1 mile from the village boundary of Read. The site comprises a mixture of rural meadow/agricultural land/woodland and lies around 800m from the AONB. The site has good links to the nearby motorways and along a number of important 'A' roads, providing easy access to Blackburn, Preston, Burnley, Greater Manchester and beyond.

Relevant History

No relevant history.

Relevant Policies

National Planning Policy Framework.
Policy G1 - Development Control.
Policy G5 – Settlement Strategy.
Policy G11 – Crime Prevention.
Policy ENV3 – Development in Open Countryside.
Policy ENV7 – Species Protection.
Policy ENV9 – Important Wildlife Site.
Policy ENV10 – Development Affecting Nature Conservation.
Policy ENV12 – Ancient Woodlands.
Policy ENV13 – Landscape Protection.
Policy ENV19 – Listed Buildings.
Policy RT1 – General Recreation and Tourism Policy.
Policy T1 – Development Proposals – Transport Implications.
Policy T7 – Parking Provision.
NW of England Plan Regional Spatial Strategy to 2021 – Policy EM1.
NW of England Plan Regional Spatial Strategy to 2021 – Policy DP7.
Biological Heritage Sites – Guidelines for Site Selection.
Government Circular 06/2005: Biodiversity and Geological Conservation.
DEFRA Circular 01/2005.
The Conservation of Habitats and Species Regulations 2010 (as amended).
Wildlife and Countryside Act 1981 (as amended).
Natural Environment and Rural Communities Act 2006.
The Protection of Badgers Act 1992.
Planning (Listed Buildings and Conservation Areas) Act 1990.
'Setting of Heritage Assets: English Heritage Guidance' (EH, October 2011).
Historic Environment Planning Practice Guide (HEPPG, March 2010).
Key Statement EN4 of the Core Strategy (Regulation 22 Submission Draft).
Development Management Policy DME3 of the Core Strategy (Regulation 22 Submission Draft).
Development Management Policy DME1 of the Core Strategy (Regulation 22 Submission Draft).

Environmental, AONB, Human Rights and Other Issues

Following deliberation by the Planning and Development Committee during the November meeting regarding how the scheme may add to the appeal of the Ribble Valley as a tourist and visitor attraction, as well as the potential employment benefits of the development; the consideration was that these positive points would outweigh the likely harm caused to habitats issues (namely the Heronry on site) or any detrimental impact upon the biological heritage site (in which a large portion of this development would sit). On this basis, members were minded to approve the application with a request that suitable planning conditions be prepared and brought back for discussion at Committee.

This report remains reflective of the concerns raised by consultees, however in line with the Committee's request, the suggested conditions are considered appropriate to control, manage, protect and conserve the site in line with relevant local and national guidance. It is requested that Committee consider the appropriate wording of Condition 6 as the applicants have suggested that a 50m buffer zone surrounding the Heronry will be appropriate and will safeguard its future survival, however Senior Officers at the RSPB and LCC Ecology both advise that a 250m buffer zone will be required. The reasoning is explained within the body of the report, as are the potential consequences for each suggested Condition.

The main issues with this application remain the principle of the development, what affect the proposed change of use and the proposed erection of the associated buildings may have with regards to its visual impact on the area, the potential impact of the scheme on the amenity of occupiers of adjacent properties and the potential impact on the Biological Heritage Site on site in which a large area of this proposal will be introduced.

The LCC Highways Officer has raised no objection in principle to the application on highway safety grounds subject to a number of conditions, and as discussed in my previous report, the scheme will have an acceptable visual impact on the setting of the adjacent Grade II Listed Building. In addition, following a number of amendments to the scheme, namely the exclusion of access to the ancient woodland area and beyond of the Biological Heritage Site and that it has been established that impacts on trees with the potential to support roosting bats can be avoided, the development will have an acceptable impact on other protected species.

PRINCIPLE OF DEVELOPMENT/ IMPACT ON THE BIOLOGICAL HERITAGE SITE

The policy basis against which this scheme should be appraised is set out in the context of national, regional and local development plan policies. At a national level the National Planning Policy Framework (NPPF) came into force on 27 March 2012 and states that at the heart of the NPPF is a presumption in favour of sustainable development. However, as the proposals affect a woodland which is thought to be ancient in origin and which is part of Old Park Plantation, New Maris Wood and Sager Hey Plantation Biological Heritage Site (BHS 73SW10), where known protected species reside, paragraph 119 of NPPF, Conserving and enhancing the natural environment, is a material consideration. It advises that *'The presumption in favour of sustainable development (paragraph 14) does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined.'* The site has been identified as such due to its current designation and following the results of the Extended Phase 1 Habitat Survey & Baseline Ecological Impact Assessment document supplied as part of the application.

Paragraph 118 of the NPPF notes that 'When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:

- if significant harm 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.

The question remains whether the potential impact upon the ecology/habitats within the Biological Heritage Site would significantly and demonstrably outweigh the benefits that the proposed employment generating, tourism related, outdoor activity centre would bring to the area. The applicant has submitted a detailed (but confidential due to the financial details included) site appraisal for the proposed development. In considering this document, I recognise that it would add to the attraction for the Ribble Valley from a tourist and visitor point of view.

From a Local Plan Policy perspective, the site under consideration here lies outside any saved settlement boundaries and as such when considering the proposal against the saved Local Plan Policies, Policy G5 allows for small-scale tourism developments appropriate to a rural area subject to the development being in accordance with Local Plan Policy RT1. Policy RT1 notes that the Borough Council will approve development proposals that extend the range of tourism and visitor facilities in the Borough subject to certain criteria being met. These criteria include not conflicting with other policies in the Local Plan and that the development should not undermine the character, quality or visual amenities of the plan area by virtue of its scale, siting, materials or design. Again, the Local Plan Policies also advise that despite these considerations the potential conflict with other Local Plan Policies relating to species protection and nature conservation such as Policies ENV7, ENV9, ENV10, ENV12 and ENV13 is a material consideration. On this basis the impact on the BHS must be considered in more detail to enable a reasoned explanation for the final recommendation given.

As noted above, the proposals affect woodland that is part of Old Park Plantation, New Maris Wood and Sager Hey Plantation Biological Heritage Site (BHS 73SW10), indeed 70% of the area within the red edge is part of the County Biological Heritage Site. This particular BHS was identified for supporting semi-natural woodland with field evidence indicating it is ancient in origin, there was/is a heronry on site and the areas of swamp/fen on site. Ancient Woodland is considered to be an irreplaceable habitat, and as NPPF states, planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, unless the need for, and benefits of, the development in that location clearly outweigh the loss (Para 118). Ribble Valley Districtwide Local Plan states that development proposals within a County Biological Heritage Site will only be permitted provided the development would not significantly harm the features of interest for which the site is selected (Policy ENV9) and that where permission is granted for development affecting the nature conservation value of sites, damage to nature conservation interests must be kept to a minimum (policy ENV10).

The site appears to support a number of Habitats of Principal Importance, such as Wet Woodland, Lowland Fen and Lowland Mixed Deciduous Woodland / Upland Mixed Ashwoods (with reference to the NVC types listed as present in table 1 of the EclA report). DEFRA Circular 01/2005 indicates that UK Biodiversity Action Plan Priority Habitats (Habitats of Principal Importance, NERC Act 2006) are capable of being a material consideration in the making of planning decisions. More specifically, the site is identified partly due to the presence of a heronry. The bird survey (submitted as part of the Extended Phase I Habitat Survey & Baseline Ecological Impact Assessment) recorded the presence of a Heron although it was not thought to be breeding. A site visit on 18th September by the County Ecologist revealed the presence of 6 Grey Heron nests within the area proposed to be used for the woodland high wire adventure course, and following consultation with the local bird group, they have confirmed

regular records of a heronry in this location with 6 active nests being recorded in 2011. This number of active nests is considered to be a "significant population of a scarce Lancashire breeding bird" (updated BHS guideline Av3).

As highlighted, this long-standing heronry is one of the qualifying features of BHS 73SW10. The site is listed under guideline Bi2b (Any site which regularly supports a significant proportion of the breeding population of a scarce Lancashire breeding bird species), and is known to regularly support at least 3 pairs of Grey Heron, which was considered to be a significant proportion of the breeding population in Lancashire at the time the guidelines were published. The BHS bird guidelines were updated in 2006 to reflect changes in bird populations and consequently the qualifying threshold of the number of breeding Grey Heron was raised from 3 pairs to 5 pairs (updated guideline Av3). BHS listings are updated in line with revised guidelines as and when data becomes available. Although the annual Grey Heron population estimates for the UK spanning more than 80 years show a long term increase, since 2001 the UK Grey heron population has been in a shallow decline (British Trust for Ornithology). Grey Herons are known to be susceptible to human disturbance, for example the RSPB advises that freedom from disturbance is an importance factor in the siting.

The woodland at Devils Elbow is currently largely unused and therefore largely undisturbed. In order to minimise impacts on the active heronry the following mitigation measures were submitted for consideration:

- Restriction of works to establish infrastructure to beyond 50m from the heronry during the heron-breeding season.
- Restricting use of loud or vibrating machinery within 50m of the heronry during breeding season.
- A buffer of 30m between the heronry and aerial walkway, with proposals to camouflage the walkway where it falls within 30-50m of the heronry.
- Prevention of all public access within 30m of the heronry.
- Access for day-to-day management within 30m of the heronry.

The County Ecologist has discussed the matter with the RSPB Senior Conservation Officer for the North West as well as a number of organisations around the country, including the National Trust, Wildlife Trusts and local bird experts. Although there does not appear to be any official guidance as to likely disturbance distances and disturbance, they advise that distances are likely to vary depending on a number of local factors (such as historic disturbance, siting of the heronry in the local landscape, physical barriers to the heronry as perceived by the Herons such as water bodies etc). However, everyone they have consulted are of the opinion that allowing public access to an undisturbed woodland supporting a heronry to within 30-50m of the Heronry would be likely to cause significant disturbance to, and likely abandonment of, the heronry (due to both visual and noise disturbance). The RSPB NW Senior Conservation Officer is of the opinion that any disturbance buffer from the heronry would need to be at least 250m, with all the organisations who manage land with heronries, restricting public access to heronry sites to varying distances of 60m, 100m, 200m and 500m depending on the local situation and site specific experience of likely disturbance distances (for example, at the site where access is allowed within 60m the public access is restricted to controlled guided walks and the public are situated on the other side of a river to the heronry; at the site where public access is prevented closer than 100m there is no access to the woodland itself). The professional opinion on the likelihood of Grey Herons continuing to nest in the woodland at Devil's Elbow if proposals for an outdoor activity are permitted within this woodland, was that it is considered extremely unlikely that Grey Herons will continue to use this traditional nesting site if the proposal goes ahead.