

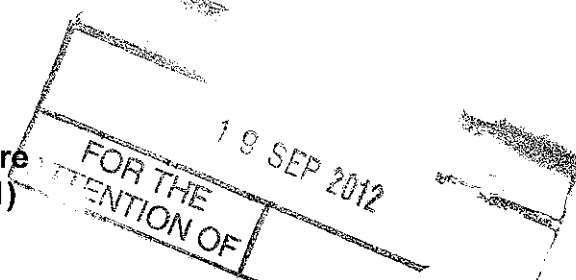


Graeme Thorpe
Planning
Ribble Valley Borough Council

Email: ecology@lancashire.gov.uk
Your ref: CONECO/3/2012/0578
Our ref: 03/12/0578/ASM/ASP/RS
Date: 19th September 2012

Dear Graeme Thorpe,

Planning Application No: **3/2012/0578**
Proposals: **Development of outdoor adventure centre**
Location: **Devil's Elbow land off Whalley Road (A671)**
District: **Ribble Valley**



Updated ecology comments following additional information and amendments

These updated comments are based on additional information and amendments to the proposals provided by the applicant as well as a site visit on 18th September 2012.

It has now been established that impacts on trees with the potential to support roosting bats can be avoided. The applicant has also agreed in principle to exclude access from the ancient woodland area of the Biological Heritage Site. It seems likely that this would be adequate to prevent damaging impacts on the ancient woodland, river banks and associated protected species. However, the following matters are yet to be addressed by the applicant:

Remaining matters to be addressed prior to determination of the application

Heronry

In accordance with the requirements of the National Planning Policy Framework, the application should not be approved unless further information is submitted to address the following matter:

A Heronry occurs within the mixed plantation where the aerial walkway is proposed. The ecological survey undertaken on behalf of the applicant failed to detect the presence of the heronry. As a result, the ecological mitigation and compensation measures submitted with the application do not include any measures to avoid, mitigate or compensate for likely impacts on the heronry.

I have consulted with both the local bird group and the RSPB and they are of the opinion that the proposed use of the area would almost certainly result in the abandonment and loss of this significant heronry.

It is not clear whether or not it will be possible to adequately avoid, mitigate or compensate for likely impacts on the heronry.

NPPF states that if significant harm to the natural environment resulting from 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 (para 118).

Prior to determination of the application the applicant should be required to provide further information to address this matter. **If this matter cannot be adequately addressed then planning permission should be refused (NPPF).**

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). The site 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.

A site visit on 18th September revealed the presence of 6 Grey Heron nests within the area proposed to be used for the woodland high wire adventure course. Consultation with the local bird group has 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).

Ribble Valley Borough Council may also wish to consult with other specialists such as the RSPB on this matter.

This matter needs to be addressed prior to determination rather than by planning condition as it is not clear that avoidance, mitigation or compensation is achievable.

Revised layout

In order to avoid any confusion over the approved scheme, I recommend that, prior to determination, the submitted layout plan should be withdrawn and replaced by a plan demonstrating that the education/interpretation trails within the ancient woodland will be removed from the proposals and showing indicative fencing proposals to prevent access to the ancient woodland as well as any measure to address the above issues in relation to the heronry.

If additional information that adequately addresses the above matters is submitted, and Ribble Valley Borough Council is minded to approve the application, then the following **planning conditions (or section 106 agreements)** are recommended:

- Full details of the access restriction scheme shall be submitted to Ribble Valley Borough Council for approval in writing in consultation with their advisors. The scheme shall include:

- A map identifying the areas to remain undisturbed with no access (to include the northern area of woodland and areas of woodland to the south and east of the proposed site access and coach parking)
- Complete restriction of dogs from the woodland areas [to prevent impacts on wildlife including protected species]
- Details of fencing to demonstrate access restrictions will be achievable and enforceable and that movement of wildlife shall be maintained
- Details of long term enforcement of access restrictions
- Long term monitoring of success of access restrictions and scope for a revised strategy of enforcement

The approved scheme shall be implemented in full.

- Full details of the ground level access scheme shall be submitted to Ribble Valley Borough Council for approval in writing in consultation with their advisors. The scheme shall:
 - Provide details of access/track/walkway routes.
 - Be informed by a spring survey of woodland flora and updated survey of woodland fauna, included protected species, in order to demonstrate that the route selection will result in the least ecological impact and to identify any species worthy of translocation.
 - Provide details of translocation methods of any species worthy of translocation.
 - Avoid impacts on native trees and any trees with bat roost potential, bird nesting habitat, and other good biodiversity value such as bryophytes, microhabitat etc.
 - Avoid impacts on dead wood (both fallen and standing) and demonstrate retention of any dead wood in situ
 - Provide details of route widths and demonstrate widths have been kept to a minimum (e.g. through use of a one way system, infrequent passing places)
 - Provide details of track material to demonstrate that it will have minimal impacts and will not alter the pH balance (i.e any hardcore shall be in line with local geology)
 - Provide details of water course crossings (such as present in the proposed barefoot trail area) to demonstrate impacts will be kept to a minimum.

The approved scheme shall be implemented in full.

- Full details of the woodland high wire course shall be submitted to Ribble Valley Borough Council for approval in writing in consultation with their advisors. The scheme shall:
 - Provide details of the route location, height and materials.
 - Avoid impacts on ancient woodland
 - Be agreed by an Ecologist on site
 - Avoid impacts on native trees
 - Avoid trees with other good biodiversity value such as bryophytes, microhabitat etc.
 - Provide confirmation that the route will not result in impacts on trees with or adjacent to trees with bat roost potential and/or bird nesting habitat

The approved scheme shall be implemented in full.

- No site clearance, site preparation or development work shall take place until a habitat creation/enhancement and management plan has been submitted and

approved in writing by Ribble Valley Borough Council in consultation with specialist ecological advisors. The management plan should include:

- Objectives
- Rationale
- Current condition and management, including species lists and survey maps
- Fully detailed methods of reinstatement of any damage to ground flora during construction, habitat creation / restoration / enhancement proposals
- Detailed long term management prescriptions including maps showing areas to be managed and informed by up to date surveys of flora and fauna
- Monitoring proposals
- Periodic review of prescriptions in consultation with planning authority in consultation with their ecological advisors

The management plan shall demonstrate that all likely short and long term impacts will be fully offset and that overall biodiversity enhancement will be delivered, to include:

- Gradual removal of Rhododendron (*Rhododendron ponticum*) (a species listed on Schedule 9 of the Wildlife and Countryside Act 1981 (as amended)) and replacement with native understory
- Eradication of Himalayan Balsam (*Impatiens glandulifera*) from the site
- Expansion of woodland and woodland edge habitat within the red line boundary to the east of the car park and within the area currently used to access the site
- Control of non native tree and shrub regeneration and replacement with appropriate native trees and shrubs
- Gradual thinning of non native trees and replacement with appropriate native species
- Retention of mature non native trees with features of biodiversity value such as Ivy cover, holes, cracks, bat roost potential, significant breeding bird potential, bryophytes etc
- Retention of standing and fallen dead wood in situ, unless a health and safety risk can be demonstrated.
- Landscaping and habitat creation shall comprise native species appropriate to the locality. Appropriate guidance is given in Lancashire County Council's Supplementary Planning Guidance on Landscape and Heritage
<http://www.lancashire.gov.uk/corporate/web/view.asp?siteid=3654&pageid=11650&e=e>
- Appropriate installation of bat roosting and bird nesting boxes

The approved habitat creation/enhancement and management plan shall be implemented in full, shall run throughout the lifetime of the development and should be the subject of a S106 agreement.

- A precautionary badger survey shall be carried out immediately prior to commencement of works. In the event that previously unrecorded badgers sett(s) are observed during this survey or at any other time prior to or during works then no works shall commence until detailed mitigation measures for the avoidance of impacts on badgers have been submitted to Ribble Valley Borough Council for approval in writing in consultation with their ecological advisors or until Natural England have been consulted over the need for a licence (if necessary). The approved mitigation scheme shall be implemented in full.

- No lighting shall be installed within the woodland or along woodland edges, and lighting associated with the development should be designed to avoid excessive light spill and shall not illuminate the woodland or woodland edges, at any time prior to commencement of works, during construction, throughout the lifetime of the development or during deconstruction works. The principles of relevant guidance should be followed (e.g. the Bat Conservation Trust and Institution of Lighting Engineers guidance *Bats and Lighting in the UK, 2008*).
- Tree felling, tree works, vegetation clearance works, vehicle movements, development works or other works that may affect nesting birds will be avoided between March and August inclusive, unless the absence of nesting birds has been confirmed by further surveys or inspections.
- A fully detailed construction method statement for the avoidance of impacts on Species of Principal Importance (for example hedgehogs) shall be submitted to Ribble Valley Borough Council for approval in writing in consultation with their ecological advisors. The approved methods shall be implemented in full.
- A fully detailed strategy for the long term avoidance of impact on protected species and priority species during the operational phase, to include badgers, bats, breeding birds etc, shall be submitted to Ribble Valley Borough Council for approval in writing in consultation with their ecological advisors. The approved strategy shall be implemented in full.
- All trees being retained in or adjacent to the application area will be adequately protected during construction, in accordance with existing guidelines (e.g. *BS5837: 2005 Trees in relation to construction - Recommendations*).
- The need for additional conditions and/or amendments to the above conditions may become apparent following the submission of additional information required prior to determination.

The applicant should be made aware of the following matters:

- Licences from Natural England may be required if protected species will be affected whether or not works require planning consent.

Management of trees is proposed, although it is not clear if this is part of the planning proposals. The applicant should therefore be aware of the following:

- Dead and decaying wood is particularly valuable for wildlife. Unless pruning and removal of dead wood is required due to health and safety issues, it would be of significant benefit to wildlife to leave it in situ. If removal of dead wood is essential it is recommended that it is left beneath the tree canopy/within the woodland block.

1. LEGISLATION AND PLANNING POLICY

In determining this application, the requirements of the following legislation, planning policies and guidance should be addressed:

- The Conservation of Habitats and Species Regulations 2010 (as amended).
- The Wildlife and Countryside Act 1981 (as amended).
- The Natural Environment and Rural Communities Act 2006.
- The Protection of Badgers Act 1992.
- The National Planning Policy Framework, 2012 (NPPF)
- Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within The Planning System (DEFRA 01/2005, ODPM 06/2005).
- North West of England Plan Regional Spatial Strategy to 2021, Policies EM1 and DP7.
- Environmental Protection / Nature Conservation policies of the Local Plan.

Further information is required in order to demonstrate that the proposed development would comply with the above legislation, policies and guidance.

The RSS states that:

- Where proposals affect the region's natural environment, prospective developers and/or local authorities should first avoid loss of or damage. If loss/damage is unavoidable then it should be mitigated and compensated for with a foundation of no net loss as a minimum requirement (Policy EM1).
- Proposals and schemes should secure a "step-change" increase in the region's biodiversity resources by maintaining extent, achieving condition, restoring and expanding habitat and species populations (Policy EM1(B)).

The NPPF states that:

- In order to achieve sustainable development the planning system should contribute to protecting and enhancing our natural environment, including helping to improve biodiversity (Para 7).
- Pursuing sustainable development involves moving from a net loss of biodiversity to achieving net gains for nature (Para 9).
- One of the core planning principles is that planning should contribute to conserving and enhancing the natural environment (Para 14).
- The planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity and providing net gain in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity (Para 109).
- When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:
 - If significant harm resulting from 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.
 - Opportunities to incorporate biodiversity in and around developments should be encouraged (Para 118).

- Planning decisions should limit the impact of pollution from artificial light on nature conservation (Para 125).

The NERC Act 2006 states that:

- Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity (Section 40).

DEFRA Circular 01/2005 states that:

- UK Biodiversity Action Plan Priority Species and Habitats (Species and Habitats of Principal Importance, NERC Act 2006) are capable of being a material consideration in the making of planning decisions.

The above comments represent the professional opinion of an ecologist and do not constitute professional legal advice. You may wish to seek professional legal interpretation of the relevant wildlife legislation cited above.

I hope these comments are helpful.

Yours sincerely,

Rebecca Stevens
Ecologist
Lancashire County Council