



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: 11th October 2012

Dear Graeme Thorpe,

Planning Application No: **3/2012/0578**
Proposals: **Development of outdoor adventure centre**
Location: **Devil's Elbow**
District: **Ribble Valley**

Ecology comments following submission of information to address potential impacts on the Heronry

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 which 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 the reasons outlined below there is uncertainty as to whether or not the submitted mitigation / compensation 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, in which case, the proposal would be contrary to Policy ENV9 of the Local Plan.

I understand you are consulting the RSPB on this matter. Unless the RSPB takes the view that the proposed mitigation/compensation measures are adequate, or propose an alternative solution, then based on the consultations detailed below, it is my opinion that Ribble Valley Borough Council should not approve the application unless the following **planning conditions** (in addition to those stated in my previous letter) are attached to any approval:

- There shall be no disturbance associated with the development, including construction works, site maintenance, site operation/recreational activity and dismantling, both within the woodland and within 250m of the edge of the area of Mixed Plantation Woodland as shown on the Phase 1 Habitat Map (Cameron Crook & Associates, June

2012) during the Heron breeding season (January to July inclusive) and until checks have been made to ensure that the birds have finished breeding.

- Both the woodland and land outside the woodland within 250m of the edge of the area of Mixed Plantation Woodland as shown on the Phase 1 Habitat Map (Cameron Crook & Associates, June 2012) shall not be open to the public between January and July inclusive and until checks have been made to ensure that the birds have finished breeding.
- A fence suitable to restrict public access whilst maintaining access / movement of wildlife shall be installed in order to prevent public access to the high ecological value areas of woodland, wetland areas and badger setts and to prevent public from viewing badger setts. No development shall commence until the fencing proposals and measures to prevent any view of the badger sett from the ground or the aerial walkway have been submitted to Ribble Valley Borough Council for approval in writing in consultation with their ecological advisors. The approved scheme shall be implemented in full.
- In addition, all the conditions recommended in my letter dated 19th September 2012 should be attached to any approval.

If Ribble Valley Borough Council is minded to approve the application with the recommended timing restrictions attached, then although the site plans are only indicative and a detailed route can be agreed under planning condition, the original route would be preferable for the following reasons:

- It has already been established that the original proposed aerial walkway route can be accommodated without affecting any trees that could support roosting bats.
- The likelihood of the badger sett being seen or disturbed by the public would be reduced.

JUSTIFICATION

The revised Biological Heritage Site bird guidelines were produced by the Biological Heritage Sites Partnership, involving close collaboration of ecologists from Natural England, Lancashire Wildlife Trust and Lancashire County Council. The guidelines are based on the 2001 breeding bird atlas for Lancashire and North Merseyside. 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). Based on current available data, there is therefore no reason to believe that the number of breeding pairs considered to be significant within Lancashire based on the 2001 atlas is not still valid.

The woodland supported 6 active nests in 2011 (local bird group data). The submitted revised plan plots the heronry. During a site visit I plotted the nests observed (6 in total) and it is clear to me that the heronry covers a much wider area than that shown on the submitted plan, including a nest to the north of the gully and nests further to the south, to the southern extent of the Mixed Plantation Woodland as shown on the Phase 1 Habitat map (Cameron Crook & Associates, June 2012).

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 of heronries (RSPB Advisory manual "Gravel Pit Restoration for Wildlife" by John Andrews and David Kinsman, 1990). The woodland at Devils Elbow is currently largely unused (planning statement para 4.10) and therefore largely undisturbed.

In order to minimise impacts on the active heronry the submitted mitigation measures include:

- 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.

There does not appear to be any submitted evidence to illustrate that these buffer distances would be adequate to avoid disturbance impacts.

I have discussed the matter with the RSPB Senior Conservation Officer for the North West and have spoken to a number of organisations around the country who are responsible for managing public access to heronries, including the National Trust, RSPB and Wildlife Trusts, and to local bird experts. Although there does not appear to be any official guidance as to likely disturbance distances and disturbance 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), everyone I 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. All the organisations I spoke to who manage land with heronries, restrict 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). All organisations limit all human disturbances within close proximity to the nests apart from occasional nest monitoring visits (yearly or monthly) by suitably experienced and qualified persons and they report that this access does result in heron disturbance.

Although the submitted mitigation measures state that there is evidence that herons are more disturbed by visual stimuli than noise, the measures only include screening of aerial walkways and no screening of other access. In addition, it is not clear that visual screening alone would be adequate to prevent disturbance. The mitigation measures also include providing users with special clothing designed to be unobtrusive, there is however no evidence provided to suggest that this is effective in avoiding disturbance.

If the planning authority is minded to approve the scheme, then, for the following reasons, I recommend that the timing restrictions recommended above should be the subject of a planning condition:

- The consultations described above indicate that disturbance within the woodland would likely result in significant disturbance/abandonment of the heronry.
- The consultations described above indicate that as a precautionary measure disturbance outside the woodland should be prevented within 250m of the heronry in order to avoid significant disturbance/abandonment of the heronry.
- There is a lack of evidence to demonstrate the adequacy of the exclusion zones proposed as part of the application.
- Owing to the scale of the woodland and taking into consideration other ecological constraints on the site, it seems unlikely that adequate undisturbed exclusion zones could be accommodated.

Heron are early breeders and are known to arrive back at the nesting site in January, when they are even more sensitive to disturbance, and have often not completed breeding until late July. Therefore in order to avoid impacts during breeding season access and works should be restricted between January and July inclusive.

Without the recommended 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.

RELEVANT LEGISLATION AND PLANNING POLICY

The Conservation of Habitats and Species (Amendment) Regulations 2012

Regulation 9A (duties in relation to wild bird habitat) places duty on local authorities to take steps to contribute to the protection and creation of bird habitat:

The competent authority must take steps in the exercise of their functions as they consider appropriate to secure the objective of the preservation, maintenance and re-establishment of sufficient diversity and area of habitat for wild birds in the United Kingdom, including by means of the upkeep, management and creation of such habitat as appropriate.

Ribble Valley Districtwide Local Plan states:

- Development proposals within or adjacent to a County Biological Heritage Site or other site of local nature conservation importance identified on the proposals map will be permitted, provided the development would not significantly harm the features of interest which led to the identification of the site or other material factors outweigh the conservation interests of the site (policy ENV 9).
- Where permission is granted for development affecting the nature conservation value of sites, including those referred to in Policies ENV8 and ENV9, conditions may be imposed or agreements sought:
 - (a) to avoid damage to wildlife habitats or physical features of the nature conservation interest;
 - (b) to secure the retention or enhancement of wildlife habitats; and
 - (c) in appropriate cases, to require the re-creation of habitats once the development has ceased.

(policy ENV10)

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 to. 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).

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).

I hope these comments are helpful.

Yours sincerely,

Rebecca Stevens
Ecologist
Lancashire County Council