

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: 22nd August 2012

Dear Graeme Thorpe,

Ecological comments

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

Thank you for your consultation in respect of the above planning application.

The main ecological issues arising from the proposal include potential impacts on:

- Old Park Plantation, New Marls Wood and Sager Hey Plantation Biological Heritage Site (BHS 73SW10).
- Habitats and Species of Principal Importance.
- Protected species (bats, otters, badgers, breeding birds).

The application lacks detailed design which makes it impossible to adequately assess the ecological impacts.

RECOMMENDATIONS

The following matters will need to be addressed before the application is determined as these issues may have implications on the overall acceptability of the scheme:

- Fully detailed proposals of the tree top route, other routes/trails, exclusion zones, and access restrictions should be submitted prior to approval in order to allow ecological impacts to be assessed before determination.
- The proposals affect a woodland which is thought to be ancient in origin and which is part of Old Park Plantation, New Marls Wood and Sager Hey Plantation Biological Heritage Site (BHS 73SW10). Further details, including access proposals (see above), are required to demonstrate that there would be no impacts on the woodland and additional qualifying features of the BHS or that any impacts would be

mitigated/compensated for. Further information is therefore required prior to determination of the application (see below).

- Clarification is required on the location and design of proposed fencing / barriers. This information is required prior to determination as installation of fencing/barriers may restrict movement of badgers and other wildlife.
- On the basis of the information submitted it is not possible to tell which trees are to be affected and of the trees to be affected which have features with the potential to be used by roosting bats. If any of the trees to be affected (e.g. by felling, tree work, installation of aerial walkways etc) have potential to support bat roosts, details of surveys of individual trees to establish the presence / absence of bat roosts and likely impacts on bats should be provided prior to determination. It should be demonstrated that the surveys comply with recognised guidelines (*Bat Surveys Good Practice Guidelines*; Bat Conservation Trust, 2012).
- A feature that has potential to be used by otters is present along the northern bank of Sabden Brook (para 3.18, EclA) and the proposals include access near to/ to the watercourse (Design and Access Statement). Prior to determination of the application further information should be submitted to demonstrate how disturbance of the feature and/or other impacts on otters which may colonise in the future will be avoided and how this will be controlled.
- A fully detailed long term strategy for the avoidance of impacts on protected species and priority species and habitats during operational phase should be submitted, to include badgers / bats / breeding birds / otters (e.g. opening times and seasonal/access restrictions, monitoring etc.)
- If further information/survey reveals the presence of roosting bats that would be affected as above or that long term impacts on any European protected species cannot be adequately avoided, then the proposed works may result in a breach of The Conservation of Habitats and Species Regulation 2010 unless a Natural England licence is issued prior to commencement of works. Ribble Valley Borough Council should not approve the application if there is reason to believe that such a licence would not be issued. Ribble Valley Borough Council should therefore have regard to the requirements of the Habitats Directive in reaching the planning decision (see the three tests discussed below).
- Further information is required on the likely impacts on birds, including survey maps and the proposed mitigation/compensation measures (see below). This is required prior to determination of the application as it is not clear that any losses can be mitigated/compensated for within the red line boundary.
- Mezereon (*Daphne mezereum*) (a Nationally Scarce species) has been previously recorded on the site and may be affected by the proposals. No information has been provided as to how impacts on this species will be avoided. Further survey is required when the species is likely to be apparent (Aug-Sept) to inform avoidance measures / design.
- No information has been provided regarding the proposed SUDS and drainage of surface water into existing watercourses. This information should be provided prior

to determination of the application as there may be implications on the design of the scheme.

- I recommend that the Environment Agency is consulted due to potential impacts on Otter and the proposed drainage of surface water into SUDS and existing watercourses.

If the above matters can be adequately addressed and Ribble Valley Borough Council is minded to approve the above application, **planning conditions (or Section 106 agreements) are recommended to address the following matters:**

- 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 and Habitats of Principal Importance (for example hedgehogs, woodland ground flora, wetland areas, water courses) 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.
- 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
 - 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.

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

- 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 may become apparent following the submission of additional information detailed above.

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 application. 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.

JUSTIFICATION FOR RECOMMENDATIONS

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.

To achieve sustainable development, the planning system should seek environmental gains and should contribute to protecting and enhancing the natural environment and help to improve biodiversity. The NPPF states that pursuing sustainable development involves seeking positive improvements in the quality of the natural environment, including moving from a net loss of biodiversity to achieving net gains for nature (NPPF Para 6-10).

Core planning principles listed in the NPPF state that planning decisions should contribute to conserving and enhancing the natural environment (NPPF Para 17).

2. AVOIDANCE OF ECOLOGICAL IMPACTS AND MITIGATION/COMPENSATION

The NPPF states that if significant harm to biodiversity resulting from a development cannot be avoided or adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused (NPPF Para 118).

2.1 DESIGNATED SITES AND ACCESS

Biological Heritage Sites

The proposed development would affect Old Park Plantation, New Marls Wood and Sager Hey Plantation Biological Heritage Site (BHS 73SW10), identified for supporting semi-natural woodland with field evidence indicating it is ancient in origin, a heronry and areas of swamp/fen.

Ancient Woodland is considered to be an irreplaceable habitat. NPPF states that 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.

The site is identified partly due to the presence of a heronry. The bird survey recorded the presence of a Heron although it was not thought to be breeding (table 1, EclA). From the information submitted it is therefore not clear whether the heronry is still present, and therefore it is not clear what the impacts would be or how any impacts will be mitigated /compensated for.

The area of woodland is presently largely "unused" (planning statement para 4.10) and therefore presumably largely undisturbed. The submitted information states that access would focus on existing footpaths. As records accessible to LCC indicate that there are no Public Rights Of Way crossing through or alongside the woodland, it is not clear to me where these "footpaths" are located and what their current usage is.

It is proposed that access is limited and strictly controlled to areas identified by the ecological consultant as being of high ecological value (Planning Statement para 4.27). The Design and Access statement states that access to these areas will be restricted to educational and research usage by permit only. However the statement then goes on to say that the nature trail will be established to follow existing footpaths with no access to the woodland allowed beyond designated areas allowed except by permit. It is not clear to me from this whether all access will be restricted to the northern area of woodland or whether the restriction will only apply to access away from the proposed trails/footpaths within the northern area of woodland. The design and access statement also states that education walks will focus on the less accessible areas of the site, watercourses etc. It is not clear from this whether it is proposed that trails allow access to less accessible (and more ecologically sensitive areas such as wetland and watercourses) areas or whether this access is off the trails/footpaths.

Details/ clarification is therefore required on the current and proposed access and restriction/control of access in order to allow an assessment of impacts on the BHS to be made, with particular reference to:

- Current access by people and dogs, including access/footpath routes and level of use
- Whether dogs will be allowed on site or not, and if so where and with what level of control
- Proposed trail routes
- Proposed exclusion zones
- Area/ecological value of ground flora to be lost/damaged by the creation of trails and the proposed surfacing material of trails
- Level of access proposed, including how access will be controlled/restricted, to and within the northern area of woodland i.e. the proposed numbers/use of both trails and the wider area; how numbers using the trails and numbers allowed off the trails will be restricted in practice; how restrictions will be policed; whether access restrictions will be enforceable.

The above should be addressed prior to determination to allow an assessment of the overall acceptability of the scheme in terms of short and long-term ecological impacts to be made and to ensure that measures to avoid / mitigate and compensate for such impacts will

be effective. Provided this can be established prior to determination, further detail can be addressed by condition.

2.2 PROTECTED SPECIES

DEFRA Circular 01/2005 states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision (para 99).

European Protected Species

Bats and Otters

The Planning Statement states that two trees are proposed for removal (Para 4.29). The Arboricultural Report recommends removal of and works to a number of trees, although it is not clear whether this work is part of the planning application. In addition a number of trees will be affected by the proposed tree top activity route. An assessment of individual trees affected, detailing the presence or absence of features likely to be used by roosting bats and the presence/absence of bat roosts, does not seem to have been provided. It is therefore not clear to me what impacts on bats/bat roosts will result from the proposed works to trees.

It is possible that additional features with the potential to be used by bats may appear through the lifetime of the development and that bats may start to use suitable features. It is therefore possible that bats/bat roosts could be affected during the operation phase of the development (for example if bat roosts develop on trees affected by tree top routes). Details are therefore required as to how impacts will be avoided in the long term.

A feature with the potential to support otters is present along the northern bank of Sabden Brook (para 3.18, EcIA). The future use of this, and any other suitable feature, by otters cannot be ruled out. No information has been submitted regarding proposed long term measures to avoid disturbance to otters. This needs to be addressed prior to approval.

If bat roost(s) would be affected and/or long term impacts on any European protected species cannot be adequately avoided then Ribble Valley Borough Council should not approve the application if there is reason to believe that Natural England would not issue a licence. Ribble Valley Borough Council should therefore have regard to the requirements of the Habitats Directive in reaching the planning decision. The licensing tests given in the Habitats Regulations should be given consideration. In summary, these are that:

1. The development is required for the purpose of
 - o preserving public health or public safety,
 - o for other imperative reasons of over-riding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment.
 - o for preventing serious damage to property.
 2. There is no satisfactory alternative.
 3. The proposal will not be detrimental to the maintenance of the population of the species at a favourable conservation status.
- (see DEFRA Circular 01/2005).

If bat roost(s) are to be affected then before the application is determined, information should be provided by the applicant to demonstrate how the above three tests will be addressed. This should include mitigation proposals, informed by adequate survey data in order to address the third test.

The site is used extensively for foraging and commuting by bats (EcIA) and lighting has the potential to adversely impact on bats. NPPF states that planning decisions should limit the impact of pollution from artificial light on nature conservation (Para 125). In order to avoid impacts on bats, and other species which may be adversely affected by lighting, it is recommended that no lighting is installed within the woodland or along woodland edges and that light spill should not illuminate these areas. A planning condition is recommended above to address this.

Other Protected Species

Badger

Badgers are known to use the site (EcIA). Badger setts are currently present on the site and it is possible that additional sett (s) could be excavated near to working areas in the time between the surveys and commencement of works. A precautionary badger survey subject to planning condition is therefore recommended above to avoid impacts on badger during construction works.

In addition, it is possible that badgers may excavate new setts at any time throughout operational life of scheme. A badger protection strategy to cover protection of existing and future setts is therefore required prior to approval of the application. In addition, badgers have the potential to be disturbed when they are active. In order to avoid impacts it is recommended that use of the site is restricted to daylight hours only. This will also avoid the need for lighting and will therefore avoid impacts on commuting/foraging bats. A long term strategy to avoid impacts on badgers (and other protected species) should be submitted prior to determination of the application (including opening times etc).

From the information submitted it is not clear to me whether any fencing/barriers are proposed and, if so, where fencing is proposed and what the design of the fencing will be. Fencing / barriers have the potential to restrict the movement of badger, and other wildlife. In order to adequately assess the ecological impacts full details on proposed fencing/barriers, including measures to prevent restrictions on mammal movements, is therefore required prior to determination of the application.

Breeding birds

In addition to the heronry (discussed above under section 2.1) the site overall provides a high diversity of habitat for bird breeding (Ecology report, para 3.19). The area of woodland is presently largely "unused" (planning statement para 4.10) and therefore presumably largely undisturbed. Although breeding bird surveys have been undertaken, no map(s) have been provided showing the location of breeding bird activity. It is therefore not possible for me to tell which areas of the woodland are used and which are of importance to breeding bird populations.

Although the EcIA report considered loss of breeding bird habitat, it is not clear what these losses would be as the planning statement only mentions removal of two trees. This should be clarified. The compensation measures proposed for loss of breeding/roosting bird habitat comprises installation of bird boxes. Bird boxes are only sufficient as short term

compensation for loss of bird habitat. Compensation measures should include replacement of semi-natural habitat.

In addition, the increased use of the site may lead to increased disturbance to breeding birds using the site. There has been no assessment of the impacts this increased disturbance would have on breeding bird species and no proposed measures to compensate for losses of available habitat to birds due to disturbance. It is therefore not possible for me to tell what impact the proposals would have on breeding bird populations, including the heronry (if still present) as discussed above.

Further information is therefore required prior to determination of the application as it is not clear to me what the impacts on breeding bird populations would be or that sufficient compensation/mitigation measures could be delivered within the red line boundary.

If Ribble Valley Borough Council is minded to approve the application it needs to be ensured that detrimental impacts on nesting birds are avoided both during construction and during the operation phase. A long term strategy to demonstrate how impacts on nesting birds will be avoided during the operation phase is required prior to determination of the application (for example through seasonal opening hours). Avoidance of impacts during the construction phase can be dealt with by planning condition.

2.3 SPECIES OF PRINCIPAL IMPORTANCE

In addition to species mentioned above, other Species of Principal Importance may use the site and may be adversely affected by the proposals, such as Hedgehog. Information is therefore required on how impacts will be avoided during operation and construction of the development. A long term strategy for avoidance of impacts on priority and protected species can be rolled together and should be submitted prior to approval to demonstrate that the long term impacts of the proposed development can be adequately mitigated. Avoidance of impacts on priority species during construction can be subject to planning condition.

2.4 HABITAT CREATION/LANDSCAPING

Planning decisions should address the integration of new development into the natural environment (NPPF Para 61).

Landscaping and habitat creation schemes should therefore comprise native species and habitats 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>.

Full details of the landscaping scheme/habitat creation scheme can be subject to planning condition.

2.5 INVASIVE & INJURIOUS WEEDS

Rhododendron (*Rhododendron ponticum*) (a Species listed in Schedule 9 of the Wildlife and Countryside Act, 1981 (as amended)) is present on the site (table 8.1, EcIA). This species should be removed gradually and replaced with a native understory as part of the site management plan. This can be subject to planning condition.

The above comments are based on a review of documents submitted with the planning application as well as a review of ecological records, maps and aerial photographs accessible to Lancashire County Council.

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