

Stephen Kilmartin
Planning
Ribbles Valley Borough Council

Email: ecology@lancashire.gov.uk
Your ref: CONECO/3/2013/0854
Our ref: 03/13/0584/ASM/ASP/RS
Date: 6th January 2014

Dear Stephen,

Ecological comments

Planning Application No: **3/2013/0854**
Proposals: **Erection of replacement dwelling**
Location: **Sawley Lodge**
District: **Ribble Valley**

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

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

- Bowthwaites and Hartsails Wood Biological Heritage Site /BHS 74NE06.
- Ancient woodland (irreplaceable habitat and Habitat of Principal Importance).
- Bats (European Protected Species)

And potential impacts on:

- Other protected, priority (Species of Principal Importance) and declining species, such as badgers, amphibians, birds etc.
- Semi-natural habitat, including Habitats of Principal Importance.

RECOMMENDATIONS

The following matters will need to be addressed before the application is determined:

Felled trees and felled area of ancient woodland

I note from the submitted information that numerous trees and trees within an area of ancient woodland (which is part of Bowthwaites and Hartsails Wood Biological Heritage Site / BHS 74NE06) have already been felled and that this includes all trees which would have been directly affected by the proposed construction works and associated earthworks (Section 5.2, Arboricultural Report, Greengage Arboricultural and Ecology, September 2013).

I understand from the submitted information that this felling has been done without a Forestry Commission felling licence and that this matter has been taken up with the Forestry Commission.

Ancient woodland does not just comprise trees rather it is a complex ecosystem with a highly diverse and distinctive flora and fauna, which has developed over many thousands of years. Therefore although the trees within this area of ancient woodland have sadly been felled, the ancient woodland interest is highly likely to remain such as the ancient woodland ground flora, the seed bank, fungi etc.

Ancient Woodland is an irreplaceable habitat (as acknowledged in the NPPF) and the 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).

The NPPF also states that "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" (Para 118).

The development proposals should be re-designed to avoid impacts on the ancient woodland site and to allow it to be adequately buffered.

Impacts which have already taken place in order to facilitate the proposed development (on the ancient woodland site and felling of trees) should be compensated for/reinstated through re-planting/natural regeneration on the ancient woodland site, appropriate tree planting elsewhere (to compensate for trees already lost outside the woodland) and additional tree planting to compensate for the loss of trees whilst replacement planting matures. A management plan to allow the re-generation of the ancient woodland site should be submitted.

Trees which have already been felled are likely to have provided nesting habitat for birds and may have been suitable to support roosting bats and the woodland may contain badger setts. It is not clear whether or not an offence under relevant wildlife legislation has occurred, however if anyone suspects that there has been then they should contact the police wildlife crimes unit.

On the assumption that habitat for birds (including nesting birds) and for roosting bats has been lost as a result of the works already carried out, it would be appropriate for it to be required that replacement bats roosting opportunities are installed within the site and for bird nest boxes to be installed.

Bats and buildings

A bat and Barn Owl survey report of the buildings proposed for demolition has been submitted (Bat and Barn Owl Scoping Survey Report, Batworker consultancy, Dave Anderson, 17th August 2013). The survey includes a building inspection, and one dusk and one dawn survey carried out within the same 24 hour period.

The survey has revealed the presence of a number bat roosts within the main lodge building (building 1) and the garage (building 2) and these roosts would be affected by the proposed works. 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

- preserving public health or public safety,
 - 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.
 - 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).

Before the application is determined, information will need to 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.

For the following reasons there does not appear to be adequate survey data to establish the use of the buildings to be affected by bats, to be confident of the absence of bat roosts in other buildings proposed for demolition or to inform the mitigation proposals:

- It is not clear that the species and status of the bats roosts are known. The report states that the results of DNA analysis of dropping are still pending and there does not appear to be any details/assessment of the type of roosts present. In addition, only one activity survey has been carried out (2 activity surveys over a 24 hour period constituting one survey) in August. Buildings 1 & 2 may be used by greater numbers of bats and/or other species of bats at other times during the bat season. A series of surveys should be carried out in order to establish the use of the buildings by bats throughout the season.
- The survey report states that additional survey work is required to support an EPS Natural England licence application.
- It is not clear to me whether all suitable bat access points in buildings 1, 2 and 5 could be covered by the 2 surveyors during the dusk/dawn surveys due to the complex nature and elevations of the buildings.
- The level of survey effort of the other buildings with no known bat roosts (buildings 3-6) does not appear to be in accordance with recognised guidelines and is not sufficient to be confident that bats do not use these buildings for roosting (with reference to pages 62 & 63 & table 8.5, *Bat Surveys: Good Practice Guidelines*, Bat Conservation Trust, 2nd edition, 2012). Only one presence/absence survey has been carried out which focused on the main lodge building (building 1), the garages (building 2) and the outbuildings (building 5) (2 surveys over a 24 hour period constituting one survey). According to the report building 5 has high potential to support roosting bats, however (if all access point were suitably covered) only one survey has been carried out. No surveys have been carried out of other buildings with moderate and low potential to support roosting bats.

Further surveys during the bat activity season (May to September) are therefore required prior to determination of the application and in order to inform the mitigation proposals. Surveys should be in accordance with recognised guidelines.

In addition the report does not provide enough information to back up the conclusions regarding the level of bat roost potential of each building or to allow me to assess the survey results and the suitability of any mitigation proposed. The following information should be provided in order that Ribble Valley Borough Council can have sufficient evidence on which to base their decision:

- A detailed description of each individual building to be affected including descriptions and location of potential bat access points and roost sites

- A map of location and coverage of surveyors
- Description of actual roosts sites, dimensions, etc
- Details/assessment of the type of roosts present.

A mitigation method statement has been submitted to address the 3rd test. Although I am not able to comment on these proposals at this stage as the survey work is not yet complete, I note that the proposals involve refurbishment of an existing building and there does not appear be any information regarding the current use of the building by bats and birds. Surveys to establish the use by bats and birds (barn owls and nesting birds) of any existing building proposed to be used as mitigation would need to be submitted prior to determination of the application.

Ecological Assessment

The ecological information submitted with the application appears to comprise a bat and barn owl survey report of the buildings to be demolished only. This does not constitute an adequate ecological survey and assessment of the likely ecological impacts resulting from the proposed development. The proposals (including the landscaping proposals) have potential to have wider impacts, for example:

- Trees proposed for removal are suitable to support roosting bats (section 6.4, Arboricultural Report).
- Other protected and Priority species may have potential to be adversely affected (such as birds, Otter, Badger, amphibians etc).
- Semi-natural habitats (other than the ancient woodland which has already been damaged) may be adversely affected. The proposals include tree planting across areas of grassland and records accessible to Lancashire County Council indicate that some of the grassland areas may be of biodiversity/botanical interest.
- No information has been submitted regarding the power house/hydro building to be refurbished and proposed for bat mitigation at this may have potential to be used by species such as bats and birds.

Further survey/assessment is necessary in order to inform the acceptability of the proposals, the design of the scheme and the need for mitigation/compensation.

The wider ecological assessment should include:

- A desk based assessment drawing on records from appropriate organisations, such as Lancashire Environment Records Network, local bat groups etc.
- A phase 1 habitat survey of the site and immediately adjacent land.
- An assessment of the potential of each habitat to support protected and priority species.
- An evaluation of the ecological status and biodiversity value of each habitat e.g. Habitats of principal Importance, aged/veteran tree etc.
- A phase 2 habitat survey of any semi-natural habitats, priority habitats, or habitats and features with the potential to support species of ecological interest. This should include mapped plant communities and full species-lists showing relative abundance. Surveys should be carried out at the appropriate time of year for the habitat in question.
- An assessment of all likely ecological impacts, including quantified and mapped areas of habitat loss, damage or fragmentation.
- An assessment of the use of all buildings to be affected by the proposals by nesting birds, including declining species such as Swallow (a species listed as amber on the RSPB/BTO Birds of Conservation Concern)

- Surveys for protected and Species of Principal Importance (UK BAP priority species) that may be affected by the proposed development (see below).
- The presence/absence of bat roost(s) in trees to be unavoidably affected by this application will need to be established prior to determination of the application. An ecological assessment of each tree to be unavoidably affected to support roosting bats should be submitted. Unless the proposals can be re-designed to avoid impacts on trees suitable to support roosting bats, then surveys during the bat activity season (dusk emergence/dawn re-entry surveys between May to September) will need to be carried out to establish the presence/absence of bat roosts. If bat roosts would be unavoidably affected then Ribble Valley Borough Council will need to have regard to the Habitats Directive in reaching a planning decision (see above).
- Assessments/surveys to establish the use of the power house/hydro building to be refurbished by bats and birds (including barn owls and nesting birds)

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). The Natural England standing advice recommends that where one of more Species of Principal Importance could be affected by a planning proposal, surveys and mitigation for any impacts are secured from the applicant prior to a decision being taken (3.10). Surveys will need to be completed prior to determination of the application.

In addition, in order to inform the need for mitigation/compensation proposals (in accordance with recognised guidance produced by the Barn Owl Trust and Natural England entitled *Barn Owls and Rural Planning Applications "What needs to happen": A guide for planners* (Ramsden and Twigg, 2009) I recommend that information is provided on the suitability of buildings to be affected to support Barn Owl (even if there is no evidence of use).

Avoidance of ecological impacts, mitigation and compensation

The applicant will need to demonstrate that the proposed development would be located and designed in a way that would ensure that harm to biodiversity will be avoided and minimised and that adequate mitigation/compensation for any unavoidable impacts will be provided. The ecological assessment (discussed above) should inform the design of the proposals, including the proposed landscaping, tree planting and tree removal.

The proposals do not appear to have been designed to avoid impacts. The proposals would affect an ancient woodland site (discussed above) and numerous trees are proposed for removal including mature specimens, although it is not clear to me what landscaping proposals and tree works form part of this application.

It is not clear to me that the proposed impacts on trees are necessary and/or unavoidable as many trees appear to be proposed for removal for "landscaping" purposes and due to them having "defects", including mature and numerous early mature native specimens. The defects (dead wood, cavities etc) will provide value to biodiversity (fungi, birds, invertebrates, bats etc) and impacts on these trees will result in a loss of biodiversity. If these works do not form part of this application then the applicant should be aware that trees have potential to support nesting birds and roosting bats and should therefore be aware of the legal protection afforded to bats and birds when planning any tree works.

In addition to ancient woodland; aged and veteran trees (trees which, because of their great age, size, or condition are of exceptional value for wildlife) are also considered in the NPPF

to be irreplaceable habitats and the 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)". It is not clear to me whether any of the trees proposed to be affected by this application could be defined as aged/veteran. The ecological assessment/survey should include this information (see above).

Any unavoidable and acceptable impacts would need to be adequately mitigated /compensated for (in addition to compensation required for impacts on the ancient woodland and tree felling already carried out). Mitigation/compensation requirements will need to be informed by the ecological assessment. I recommend that gains and losses are quantified.

Landscaping and habitat creation/compensation schemes should comprise native species and habitats appropriate to the locality. Appropriate guidance is given at:

Woodland planting mixes (table 2):

<http://www.lancashire.gov.uk/environment/ecology/advice/nnw.asp>

Grassland mixes:

<http://www.lancashire.gov.uk/environment/ecology/advice/wfg.asp>

The applicant should demonstrate that retained and replaced habitat would be protected from the development and managed to maintain and enhance their biodiversity for the lifetime of the development.

At this stage I am unable to provide full comments as the surveys are not complete and the likely ecological impacts have not been fully established. I will be able to provide full comments once the above matters have been addressed. Ribble Valley Borough Council should however be aware that the proposals will affect bat roosts, and therefore they will need to have regard to the Habitats Directive in reaching a planning decision (as discussed above), and that Rhododendron is present on the site (an invasive species listed under Schedule 9 of the Wildlife and Countryside Act (1981)(as amended). If the principal of the development can be established then there will be a need for planning conditions (or section 106 agreements).

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).

- Environmental Protection / Nature Conservation policies of the Local Plan.

Appropriate re-design of the scheme and further information is required in order to demonstrate that the proposed development would comply with the above legislation, policies and guidance.

The above comments are based on a review of documents submitted with the planning application as well as a review of ecological records, maps, aerial photographs and images 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