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Email: ecology@lancashire.gov.uk
Your ref: CONCS/3/2013/0981
Our ref: 03/13/0981/ASM/ASP/SG
Date: 30th January 2014

Dear Colin Sharpe,

Ecological comments

Planning Application No: 3/2013/0981

Proposals: Outline application for residential development comprising 20 dwellings (including 6 units of social housing), 3 close care apartments and a 60 bed care home (all matters reserved for subsequent approval)

Location: Land at Chatburn Road, Clitheroe

District: Ribble Valley

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

In general, much of the application area appears to be of relatively low biodiversity value. However there are features of biodiversity value (hedgerow/mature trees and marshy grassland) and these provide potential habitat for protected and priority species (including bats, nesting birds including ground nesting birds, common toad). Whilst the illustrative masterplan indicates that the proposed development would mainly be located on the species poor grassland, it appears that the marshy grassland would form part of the amenity land and potentially lie within the garden curtilages. Ribble Valley Borough Council should be satisfied that such habitat can be retained and that potential impacts on such habitat and associated species can be avoided. If potential impacts cannot be avoided, then there will be a need to offset the potential loss. If this were the case, there may be a need for offsite compensation.

If trees with bat roost potential would be affected then further assessment/surveys to establish the presence/absence of bat roosts will need to be carried out **prior to determination of the application**. If bat roost(s) would be affected then Ribble Valley Borough Council will need to have regard to the requirements of the Habitats Directive in reaching a planning decision (see below).

RECOMMENDATIONS

If the above matters can be adequately addressed and Ribble Valley Borough Council is minded to approve the above application, **the following matters should be addressed by planning condition or at detailed design/reserved matters stage:**

- It would be appropriate if the development layout and/or landscaping proposals were amended to enhance the habitat connectivity between tree 19 and the habitats on the site boundary.
- External lighting associated with the development shall be minimal, designed to avoid excessive light spill and shall not illuminate potential bat habitat (e.g. hedgerow, trees) and or/ bird breeding places. 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, 2009*).
- A pre-works survey / inspection for protected and priority species shall be carried out immediately prior to commencement of development. If any such species are encountered then measures to avoid or adequately mitigate impacts on the species shall be submitted for approval prior to commencement of works. If protected species are suspected or detected during this survey or at any point prior to or during works then works must cease immediately and advice sought regarding the need for a licence from Natural England.
- Tree felling, vegetation clearance works, demolition work 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.
- No site clearance, site preparation or development work shall take place until a landscaping plan has been submitted and approved by Ribble Valley Borough Council in consultation with specialist advisors. The scheme shall demonstrate that all unavoidable ecological impacts will be adequately off-set and that biodiversity will be maintained and enhanced. The plan shall include replacement planting for the loss of hedgerow/trees and replacement nesting opportunities for birds. The approved landscape plan shall be implemented in full.
- Details of measures that will be implemented during and after construction for the protection of retained biodiversity features (e.g. trees, hedgerow, marshy grassland, watercourses, adjacent fen habitat, proposed and potential bat roosting/breeding bird nesting opportunities) shall be submitted to Ribble Valley Borough Council for approval in writing. The approved measures shall be implemented in full.
- Plants listed on Schedule 9 of the Wildlife and Countryside Act 1981 (as amended) which occur on the site such as Himalayan Balsam shall be eradicated from the site and working methods shall be adopted to prevent their spread in accordance with Environment Agency guidance and codes of practice.

- Pending further information relating to trees and bats, the proposed mitigation for bats under section 5.4 of the ecology report shall be implemented in full.
- The need for additional planning conditions (including the need for offsite compensation) may become apparent following the submission of the additional information required above.

The applicant should be made aware of the following matters:

- Licences from Natural England may be required if protected species will be affected.
- In order to retain habitat connectivity for Species of Principal Importance, such as hedgehogs, boundary treatments should not be flush to the ground, or suitably sized gaps should be left at strategic points.
- If the permission has not been implemented within 2 – 3 years of the survey date, an updated survey will be required.

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

NPPF:

- 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).
- The planning system should contribute to and enhance the natural environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall

decline in biodiversity, including establishing coherent ecological networks (NPPF Para 109).

- Planning decisions should address the integration of new development into the natural environment (NPPF Para 61).
- Opportunities to incorporate biodiversity in and around developments should be encouraged (NPPF Para 118).

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

2. AVOIDANCE OF ECOLOGICAL IMPACTS AND MITIGATION/COMPENSATION

In order to meet the requirements of the above, the development proposal would need to demonstrate that the development would be located and designed in a way that would avoid ecological impacts and that mitigation/compensation measures were sufficient to fully off-set all unavoidable ecological impacts and deliver enhanced quantity and quality of biodiversity and habitat. It should also be demonstrated that habitat connectivity would be maintained and enhanced.

3. BIOLOGICAL HERITAGE SITE

Bellman Farm Marsh Biological Heritage Site lies approximately 300m to the north east of the site. The site has been identified for its wetland and scrub habitats. The site also supports the presence of the nationally scarce green figwort. It is my understanding that the water course runs from the BHS towards the site and provided that this is the case, it is my opinion that impacts on the BHS seem reasonably unlikely.

As full botanical species lists have not been provided within the submitted ecology report, it is not clear whether green figwort, a Nationally Scarce species (recorded within the wider area) is present within the application area. If present, there may be a need for appropriate mitigation measures.

4. PROTECTED SPECIES

DEFRA Circular 01/2005 states that if protected species are reasonably likely to be present and affected by the proposed development, then a survey/assessment to establish the presence or absence of protected species and the extent that they may be affected by the proposed development needs to be undertaken before planning permission is granted.

Bats (European Protected Species)

From the illustrative plan it appears that the majority of trees are to be retained which is appropriate. However the tree report recommends the removal of dead wood of a number of trees (T15, 16, 17, 19) and from the illustrative plan and the design and access statement, it appears that hedgerow 2 and T18 are to be removed to facilitate development.

The ecology report acknowledges that several of the mature hawthorn had cracks, splits and crevices which made them potentially suitable for roosting bats and recommends

that they should be subject to a bat survey if affected by the proposed development. It is not entirely clear to me whether this relates to any of the hawthorns within the defunct hedgerow 2 or whether these trees were classed as having no opportunities for roosting bats. Clarification should be sought regarding this matter.

The tree report recommends that dead wood should be removed from T16, T17 and T19 and from the illustrative plan it appears that T18 will be removed as part of the proposal. With the exception of T19 (where no details have been provided on its potential to support roosting bats), these trees have been identified as trees with moderate/low potential to support roosting bats (2b category). No detailed descriptions of the roosting opportunities provided by each tree has been provided (apart from some crevices). However, the tree report acknowledges that T18 has considerable dead and damaged wood within the canopy, that there are large cracks within the main stem and cavities and a major wound on eastern side. Such features may have the potential to support roosting bats.

It is my understanding that the trees were viewed from the ground only and it is therefore not clear to me that all suitable features for bats that are present would have been observed. Whilst the categories provided within the Bat Conservation Trust guidelines (2012) is useful, the guidelines state that this assessment method can be used to assess any tree for its value to bats, but it is not considered appropriate for trees affected by the proposed development.

Although the application is for outline permission, it is not clear to me that impacts on these trees with some bat roost potential could be avoided. The presence/absence of bat roosts in these trees has not been established.

If trees with potential to support roosting bats would be unavoidably affected, then further assessment/surveys to establish the presence/absence of bat roosts will need to be carried out prior to determination of the application.

Surveys should be in accordance with recognised guidelines and sufficient survey effort should be carried out to have confidence that bats do not use the trees for roosting.

If further surveys reveal the presence of bat roosts which would be affected 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
 - 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).

If bats roost would 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.

T19 – Ash tree

Whilst T19 is to be retained, from the proposed illustrative plan, it appears that it would become isolated within the design of the development. No information has been provided within the ecology report on the potential for this tree to support roosting bats. The proposed development could potentially isolate a tree with the potential to support roosting bats. This may reduce its suitability for roosting bats. It should be ensured that the development is designed to maintain and enhance habitat connectivity between this tree and suitable bat foraging habitat. For example, incorporation of a native hedgerow to link the tree to the stream or existing boundary hedgerow would be beneficial.

Foraging/commuting habitat

The ecology report acknowledges that the stream, marshy grassland and hedge lines provide potential foraging habitat for bats. Avoidance of impacts on foraging bats needs to be addressed as part of the detailed design. For example, it should be ensured that such habitat is retained (and enhanced where appropriate) within the design of the development.

Natural England's standing advice states that the use of lighting may affect bats, particularly if it is directed towards their entrance/exit points from roosts and that depending on the species involved, it may also impact upon their feeding and commuting areas with some species actively avoiding lit areas. Any external lighting associated with the proposals will therefore need to ensure that impacts on bats will be avoided by ensuring that suitable roosting, foraging and commuting habitats for bats are not subjected to additional lighting/light spill. 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, 2009*).

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

Otter (European Protected Species)

No sign of otters were found during the ecological assessment. However the report acknowledges that the bank side vegetation provides adequate cover for an otter resting place. It would therefore be appropriate to carry out a precautionary pre-works check immediately prior to works. This could be dealt with by planning condition.

Water Vole

Whilst the ecology report concludes that no water voles are present, evidence of a single historic (possible) water vole burrow was recorded. As a precautionary approach, if works are to be carried out within 5m of the banks of the water course, it would be

appropriate to carry out a pre-works check immediately prior to works. This could be dealt with by planning condition.

Badger

No evidence of badger was recorded during the survey. However Lancashire County Council has access to a record for badger in the wider area. As badgers are mobile species, it is possible that they may move into the area between the date of the survey undertaken and the proposed works. It would therefore be appropriate that a precautionary pre-works check for badgers is undertaken immediately prior to works to confirm the continued absence of badgers. If badgers are found at that time, proposals for mitigation will need to be approved and works may need to be carried out under licence. This may have implications on the design of the development. This could be dealt with by planning condition.

Breeding Birds

As acknowledged in the ecology report, habitats on the site (e.g. trees, hedgerow, marshy grassland) have the potential to support nesting birds, including Species of Principal Importance. It needs to be ensured that detrimental impacts on breeding birds are avoided. A planning condition is recommended above for the avoidance of impacts on nesting birds.

From the illustrative plan, it appears that the central defunct hedgerow is to be removed. Any unavoidable losses of habitats should be adequately compensated for through appropriate landscaping and installation of bird nest boxes as appropriate. It appears that there is space within the application area to adequately compensate for any losses in relation to the potential loss of hedgerow/trees, through additional planting/management of the retained hedgerows/through a sensitive landscape plan. I recommend that native species and species of known value to biodiversity are used.

Ground nesting birds

Whilst I have not visited the site, the ecology report acknowledges that the marshy grassland has high potential to support ground nesting birds such as Lapwing (Species of Principal Importance). Lapwing is a species known to be declining, where it is listed as a Species of Conservation Concern (red list). DEFRA Circular 01/2005 indicates 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 illustrative plan indicates that whilst no housing is proposed on the marshy grassland, it appears that it will form amenity land and pedestrian access into this area is proposed. This does not appear to have been addressed in the ecology report. In the absence of further information, it is not known whether the grassland supports such species. However Lancashire County Council does have access to records for Lapwing and Snipe in the wider area. If the site supports ground nesting birds, the proposed development would have potential impacts on such species either through loss of habitat and/or potential disturbance/increased recreational pressure. From the illustrative masterplan, it is not clear that the proposed development could accommodate for such

species within the proposed layout. If this is the case, there may be a need for offsite compensation to offset the potential impacts.

5. HABITATS AND SPECIES OF PRINCIPAL IMPORTANCE (Section 41 NERC Act 2006)

Habitats of Principal Importance

The ecology report acknowledges that the stream and adjacent fen habitat (outside the red line boundary) are Habitats of Principal Importance. It needs to be ensured that potential impacts (both direct and indirect) on such habitats are avoided. The ecology report makes a number of recommendations which are appropriate and should be taken into consideration at the detail design stage such as provision of an appropriately sized buffer zone around such habitats.

Ribble Valley Borough Council will need to be satisfied that appropriate measures can be implemented to prevent adverse changes in ground water and surface water quality and flow to avoid potential impacts on semi-natural habitats (e.g. stream, marshy grassland and adjacent fen). Potential changes in hydrology could result in potential impacts on such habitats. It will need to be ensured that such habitats are protected during the construction and operational phase of the development.

Pollution prevention measures should be adopted to ensure that the water course is adequately protected during the works. Environment Agency guidelines should be followed.

Species of Principal Importance

The ecology report acknowledges that the site has potential to support Species of Principal Importance including a number of bird species and Common Toad associated with the stream and marshy grassland.

It would therefore be appropriate for precautionary working measures to be adopted to avoid impacts on such species during site clearance. A planning condition is recommended above to address this matter.

6. SEMI-NATURAL HABITAT

Any unavoidable loss of habitat will need to be adequately compensated for. Retained and replacement habitats should be managed to maintain and enhance their biodiversity value for the lifetime of the development. Landscaping and habitat creation schemes should comprise native species and habitats appropriate to the locality.

Marshy grassland

Whilst the full botanical species list has not been provided, it appears that the marshy grassland has some biodiversity value. The ecology report acknowledges that such habitat also has the potential to support protected and priority species such as foraging bats, ground nesting birds such as lapwing, lying up area for otter and common toad.

If the marshy grassland cannot be retained and managed appropriately, to maintain its biodiversity value (e.g. manage as a separate unit to the gardens, avoid recreational impacts, sympathetic management regime for biodiversity), there would be a need to offset the potential loss.

Hedgerow

Whilst the hedgerows are defunct, the ecology report acknowledges that they may be long established and recommends that hedgerows are retained with appropriate buffer zones retained around them to enable them to continue to function as wildlife corridors. It would therefore be appropriate that the hedgerow (and other semi-natural habitat such as the stream and marshy grassland) are adequately retained and managed as a separate unit to the proposed gardens, i.e. not as garden curtilage, in order to avoid potential loss of biodiversity value.

7. INVASIVE & INJURIOUS WEEDS

Himalayan balsam (*Impatiens glandulifera*), a species listed in Schedule 9 of the Wildlife and Countryside Act, 1981 (as amended) has been recorded within the site. A planning condition is recommended above to ensure that any such species are eradicated and the spread of the species is prevented.

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,

Sarah Gorman
Ecologist
Lancashire County Council