

Appendix – Council’s Ecologist First and Second Responses

First response:

I've noted the application documents, including the Ecology Report by K.P. Ecology Ltd (19th November 2015), and I've recently visited the site.

My comments below relate to the combined development impacts of all four planning applications together. However, potentially the comments may also apply alone to any individual application.

I have three main concerns:

1. Inappropriate site location in relation to ecological networks.
2. Potential impact of lighting to cause disturbance to bat foraging and commuting.
3. Hedge removal for visibility splay impacting upon dormice.

1. Ecological networks

NPPF has introduced a requirement to 'establish coherent ecological networks' (para. 109) and advises that local planning authorities should plan positively for the protection and enhancement of networks of biodiversity (para. 114) by mapping components ('wildlife corridors and stepping stones') of the local ecological networks and promote their preservation (para. 117). Local Plan policy EQ4 states that development proposals will 'promote coherent ecological networks'.

Components of the local ecological network have been identified and mapped by a partnership of Somerset County Council, Somerset Wildlife Trust, and Somerset Environmental Records Centre. In respect of this application site, the mapping includes a main habitat group of broadleaved woodland and identifies 'core areas', 'dispersal areas', and 'stepping stones'. The plan on the next page shows these components in relation to the application site.

Dark green indicates a 'core area' of broadleaved woodland.

Mid green indicates a 'stepping stone' of broadleaved woodland.

Light green indicates 'dispersal areas' for broadleaved woodland.

Red indicates the approximate area of the proposed buildings.

that bats will be foraging and/or commuting (between roosting sites and foraging areas) in the vicinity of the application site.

Bat species can be broadly divided into two groups with some species showing some tolerance of artificial lighting whilst other species are quite sensitive to even low levels of artificial lighting. In a worst case scenario, it's possible for example that bats roosting in the smaller block of woodland to the west of the application site could be inhibited from commuting to feeding areas in the larger woodland blocks to the east if the development introduces an increase in light levels around their favoured or only commuting route.

Regular disruption to bat flight routes could be significant and contrary to the Habitats Regulations 2010 which affords protection to all species of bat. Local planning authorities are required to have regard to the provisions of the Habitats Regulations when determining planning applications. This is a strong requirement that has been supported by judicial review.

The likelihood of significant disturbance from the development depends very much on:

- a) The species of bat present in the area (and their sensitivity to artificial lighting).
- b) The foraging and commuting behaviour of bats and the sensitivity of the application site in relation to their use of the local landscape.
- c) The effectiveness of controlling artificial light levels through the planning system.

Addressing these points in turn:

- a) Bat species present in the area

A data search request to Somerset Environmental Records Centre has returned 113 records (over the last 25 years) for bats within 3km of the application site. Disregarding those species that are regarded to be more light tolerant, and records for small numbers of relatively common species more than 2km away, I can summarise 'significant' records as follows (NOTE: the following are all species considered to have some or significant sensitivity to artificial lighting):

800 metres from the site (survey date 2011):

Bechstein's Bat - 1 adult.

This is a very rare tree-dwelling bat (UK population estimate is around 1500), mostly associated with old growth broadleaved woodland. It is a 'priority species' (listed under Section 41 of the Natural Environment and Rural Communities Act 2006) and of very high conservation significance.

Whiskered/Brandt's Bat - 2 adults.

Woodland / woodland edge bats with widespread distribution.

Brown Long-eared Bat - 6 adults.

Although relatively common and widespread, this too is a 'priority species', probably due to its vulnerability to development of barns and consequent risk of wide-scale impacts to population numbers.

1500 metres from the site (various dates from 1990 to 2013):

Lesser Horseshoe Bat - max. count of 32.

Another 'priority species' with a localised distribution (predominantly the south west of the UK) that feeds in sheltered lowland valleys.

Natterer's Bat - max. count of 6.

Although a widespread distribution, it is a relatively scarce species that forages around trees.

b) Bat activity at the application site and sensitivity

The above data suggests there are five light-sensitive species of bat that could forage (or commute) in the vicinity of the application site. (From records, it's also likely that other species of bat such as serotine, noctule, and pipistrelle species will be active in the area).

The Ecological Report (K.P. Ecology Ltd, 19th November 2015), hasn't included any surveys of bat activity at the application site. (Nor did it include a data search). Instead, it assumes that the habitat will be used by foraging bats but notes that no bat roosts will be affected by the proposed development.

The likelihood of the application site being part of an important foraging or commuting route (and having the potential to cause significant disturbance) is low (due to the site's size relative to the woodland) and this has presumably influenced the consultant's recommendation that no further survey work is necessary. However, given the presence in the area of five light-sensitive species of bat, including 3 'priority species', and including the high conservation status of the very rare Bechstein's Bat, I suggest a more cautious approach and recommend bat activity surveys in the summer months should be conducted in order to properly assess the sensitivity of the site.

It could therefore be concluded that there is insufficient information (lack of bat activity surveys) to determine this application in compliance with our statutory obligations under the Habitats Regulations 2010.

c) Control of lighting through the planning system

Until the above recommended bat activity surveys have been completed, it isn't possible to properly assess the sensitivity of the site with regards to bats. However, should surveys reveal the application site is important for light-sensitive species of bats, a typical mitigation proposal might be to place controls over the type, locations, intensity or duration of artificial lighting.

Whilst this approach might be appropriate for larger residential developments for example, I question or have doubts about the effectiveness of such an approach in this sort of situation:

- o Would such conditions be time limited after which more intense lighting could be installed with possible harm to bats?

o In such a remote location, it's unlikely the site or any deviation from an approved lighting scheme would be subject to any public surveillance and reporting to the lpa for enforcement action.

Whilst I note that 'low level' lighting is proposed in order to minimise wildlife impacts, should the site prove to be sensitive for bats, I would argue that conditions to control light levels are effectively not enforceable, and that completely avoiding development of the application site (i.e. refusal) would be the appropriate outcome in accordance with NPPF (paragraph 118).

3. Hedge removal for visibility splay impacting upon dormice.

Whilst I note that the proposals don't include any hedge removal for access, should it be deemed necessary by Highways to remove any hedge for visibility splays (either at New Lane or on the A30) then I raise concern about impacts upon dormice, a species subject to the provisions of the Habitats Regulations 2010.

Dormice have been recorded in hedges in several locations to the east, west and north, and I therefore regard there to be a high likelihood of dormouse presence in the hedges local to this site.

I consider it unlikely that hedge removal for visibility, and dormouse presence, would constitute a reason for refusal. However, if hedge removal is required, then it may be appropriate to further assess the risk and/or apply a relevant planning condition. Please could you re-consult me in this event.

Second response:

Summary

In response to my original consultation response (dated 12 January 2016) further information has been received (letter from KP Ecology Ltd, February 12, 2016) that attempts to address the concerns that I raised.

On the issue of lighting causing disturbance to bats, bat surveys haven't been undertaken but the consultant assumes that bats will be active in the area, and she describes extensive mitigation measures that will be employed to minimise the level of light disturbance to bats.

The Habitats Regulations requires local planning authorities to consider potential impacts upon bats, and to specifically report on the derogation tests in the committee report, before any grant of planning permission is given. It is generally considered that this requirement can't be adequately fulfilled without proper bat surveys.

Failure of any planning decision to adhere to the provisions of the Habitats Regulations could result in judicial review and significant risks to the Council (several local authorities have been taken to court on this specific issue). If withdrawal (or extension of time) to allow for further bat surveys isn't agreed to then I strongly recommend refusal.

The lack of bat surveys is also contrary to Local Plan policy EQ4. Should subsequent bat surveys identify the site to be sensitive, and the development to present a significant risk of harm, I suggest the mitigation hierarchy required by NPPF may require an alternative location rather than mitigation to minimise light levels as proposed by the applicant.

Lack of bat surveys

Recognising this to be a potentially sensitive location for bats, pre-application advice was given that any development at this location would need to be supported by bat surveys. These haven't been included with the application (the Ecology Report submitted with the application considered bats but didn't include specific bat surveys).

Some species of bats, generally those of greater nature conservation importance, can be particularly sensitive to artificial lighting. Industry guidance for bat surveys¹ lists lighting as one of the impacts of development upon bats (Table 2.1). I doubt the other planning applications involving lighting that are referred to are sufficiently close to significantly raise ambient light levels at this application site.

Extensive mitigation measures to minimise lighting are offered by the applicant and described by the ecological consultant.

However, I remain concerned that:

1. Offering mitigation without properly assessing the impacts doesn't satisfy planning policy and legislation requirements.
2. Any planning conditions to control lighting at this location couldn't reasonably be monitored and enforced in the longer term (and perhaps fail the tests for conditions) with the risk that light levels could increase in the future (e.g. under different occupier) and result in harm to bats. This therefore brings in to dispute the principle of development at this location.

Policy EQ4 requires that applications should be informed and accompanied by a survey and impact assessment, and hence the application is contrary to this.

An adequate bat survey is likely to require monthly surveys from April to October in order to comply with industry guidance although I suggest the detailed specification for survey should be agreed between myself and the applicant's ecologist.

This will have implications for the timing of the application. It is not uncommon (both at SSDC and other authorities) for applications to be withdrawn (or an extension of time agreed) to allow bat surveys to be undertaken.

Local planning authority obligations under the Habitats Regulations

The Habitats Regulations 2010 provides protection for bats that makes it an offence to cause disturbance that would impair their ability to survive, breed or reproduce, or to rear or nurture their young. Artificial lighting could have this effect depending upon species present and patterns of activity around the application site.

A High Court judgement² made it clear that when determining a planning application which could harm a European Protected Species (which includes all species of bat) a local planning authority must be sure that the three derogation tests are satisfied:

1. the development must be for imperative reasons of overriding public interest or for public health and safety;

¹ Bat Surveys for Professional Ecologists: Good Practice Guidelines (3rd edn), J. Collins, 2016, The Bat Conservation Trust.

² Woolley v Cheshire East Borough Council, 2009.

2. there must be no satisfactory alternative; and
3. the favourable conservation status of the species must be maintained.

Furthermore, the court ruling also made it clear that the committee report must specifically address and demonstrate how these derogation tests are satisfied before any grant of planning permission is made.

Without proper bat surveys and impact assessment, I don't consider test 3 (maintaining favourable conservation status) can be adequately demonstrated.

Should further bat surveys suggest the development could cause harm to bats, I have significant doubt that the meeting of tests 1 and 2 could be adequately demonstrated.

Avoiding harm takes precedence over providing mitigation - NPPF and appeal case

Whilst the sensitivity of the location in respect of bats is unknown, should bat surveys later identify the site as sensitive, there shouldn't be a presumption that mitigation is the automatic or only outcome (even though this is the most common scenario).

National Planning Policy Framework (paragraph 118) 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. This principle was supported in a recent appeal³ where the inspector concluded "*the proposal attempts to mitigate the development but the starting point should be to locate the proposal on another site causing less harm*". The appeal was dismissed solely on this principle.

Conclusions

I consider any grant of planning permission wouldn't be legally sound prior to further survey and assessment of impacts upon bats. If withdrawal (or extension of time) isn't agreed to then I strongly recommend refusal (see appendix).

I consider this could be a potentially sensitive site for bats, and unless surveys demonstrate otherwise, I consider legislation and planning policy might not support the usual scenario of providing mitigation and might only be satisfied by an alternative location for the development.

Appendix – suggested reason for refusal.

The proposal lacks any surveys for bats contrary to Local Plan policy EQ4 and fails to provide information to enable the local planning authority to demonstrate compliance with The Conservation of Habitats and Species Regulations 2010.

³ Appeal Ref: APP/R3325/A/12/2188253 - Puthill Wood, Cricket St Thomas Estate, 1 August 2013.