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Date: 26 November 2018

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our ref
E RDC RR/2018/1787/P

your ref
RR/2018/1787/P

By email: planning@rother.gov.uk

Dear Mrs Shepherd

ERECTION OF 30 MARKET DWELLINGS TOGETHER WITH ACCESS, PARKING, OPEN SPACE AND RECREATIONAL LAND

STRAND MEADOW – LAND TO THE SOUTH WEST OF, BURWASH

ECOLOGICAL CONSULTATION

With reference to your email of 20 August 2018, I have now had the opportunity to consider the additional information submitted for above application and offer the following comments. I apologise for the delay in my response.

Policy Context

1. Section 40 of the Natural Environment and Rural Communities (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.”
The Duty applies to all public authorities in England and Wales, including all local authorities. Conserving biodiversity includes restoring and enhancing species and populations and habitats, as well as protecting them.
2. The National Planning Policy Framework (NPPF, 2018) states that *“the planning system should contribute to and enhance the natural and local environment by... protecting and enhancing ...*

sites of biodiversity or geological value...” and *“minimising impacts on and providing net gains for biodiversity ...”* (paragraph 170).

3. The NPPF sets out principles that local planning authorities should seek to apply when determining planning applications to protect and enhance biodiversity; these include refusing planning permission if significant harm to biodiversity from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for; refusing development that would result in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees), unless there are wholly exceptional reasons and a suitable compensation strategy exists; and encouraging opportunities to incorporate biodiversity improvements in and around developments, especially where this can secure measurable net gains for biodiversity (paragraph 175).

Designated Sites and Protected Species

4. The Ecological Assessment Report (The Ash Partnership, February 2017) submitted with the application is based on surveys that were carried out in 2010 and 2016. BS42020: 2013 *Biodiversity – Code of Practice for Planning and Development* states that ecological information should be sufficiently up-to-date, e.g. not normally more than two/three years old, or as stipulated in good practice guidance. Whilst it is recognised that outline permission was granted for the site in early 2018, some areas may require updated surveys to inform appropriate mitigation, compensation and enhancement, especially considering the limitations to some of the surveys.
5. The site is not subject to any designations for its nature conservation interest. There are areas of ancient woodland c. 195m to the west and 160m to the north, which are connected to the site via treelines and hedgerows. There are a number of large/veteran trees and ancient woodland indicators along the boundaries, especially along the watercourse. It is noted that the boundary habitats are to be retained; they should also be protected and enhanced, particularly with respect to maintaining and improving connectivity with the wider area.
6. The site comprises three previously horse-grazed fields surrounded by hedgerows and scrub vegetation. There is a small watercourse running east to west across the site arising from a spring. In 2016, the site supported dense and scattered scrub, scattered broad-leaved trees, tall ruderal vegetation, poor semi-improved grassland, wet grassland, an acid/neutral flush, running water and bare ground. It is noted that species richness of the semi-improved grassland increased between 2010 and 2016, presumably due to a reduction in grazing. If the site is no longer grazed, species-diversity may have increased further and as such, an updated/walkover survey is recommended.
7. The acid/neutral flush is an uncommon habitat which could potentially be classified as a Habitat of Principal Importance under Section 41 of the NERC Act. The Ecological Appraisal report states that two flushes would be retained and two would be lost, recommending translocation of the lower flushes as deep turves; this is supported. Measures should be put in place to ensure the protection of the flushes in terms of water quality and quantity, and to ensure that there are no detrimental impacts on habitats in the wider area through run off via the stream.

Badgers

8. Badgers are protected under the Protection of Badgers Act 1992. There is a main sett immediately adjacent to the south eastern corner of the central field, and there are badger runs and evidence of foraging in the eastern half of this field. Ideally there should be a minimum buffer of 30m between the sett and the development to avoid disturbance. The proposed landscape buffer is 23m in width from the sett, and taking into account rear gardens, there is approximately 30m to the nearest build. Given that the sett is on significantly higher ground than the proposed development, this is acceptable.
9. The recommendations made in the Ecological Assessment report are supported and should be implemented. Specifically, the sett should be secured against active disturbance/vandalism and landscaping should include foodplant trees such as apples, pear and sweet chestnut. In addition, any boundaries within the site should be made permeable to wildlife, and best practice working methods should be employed to ensure protection of badgers during construction.

10. It is recommended that prior to construction, an updated badger survey is carried out to assess current badger activity on site and to inform appropriate mitigation, compensation and enhancement.

Dormouse

11. The hazel dormouse is fully protected under Schedule 5 of the Wildlife and Countryside Act 1981, as amended and Schedule 2 of The Conservation of Habitats and Species Regulations 2010, as amended, making it a European Protected Species. The presence of dormice should be assumed likely in areas of woody habitat (including plantations, hedgerow and scrub) within their range, particularly in the south of England.
12. The Ecological Assessment concluded that dormice are either absent or possibly localised along the site boundary based on visual searches for nests and nuts in 2010 and 2016. Natural England's standing advice is that surveys can be limited to visual searches for nests and nuts if the work involves only losing a small amount of habitat, e.g. gaps in hedgerows or removing a small amount of hazel scrub. The Ecological Assessment concludes that dormice, if present, will not be directly impacted as all potential habitat is to be retained, presumably referring to boundary habitats. However, no consideration is given to the potential presence of dormice within scrub on site. As such, it is recommended that a precautionary approach is taken to scrub removal for which a method statement should be provided.
13. The proposed development may have indirect impacts such as an increase in predation by cats. To reduce such an impact, prickly species should be planted along the screen between the development and the landscape area. The landscaping scheme should also seek to strengthen and enhance boundary habitats and should take account of the Dormouse Conservation Handbook for species selection. Dormouse boxes should be provided in suitable locations within boundary habitats.

Reptiles

14. Slow worms, grass snakes, common lizards and adders are protected against intentional killing or injuring under Schedule 5 of the Wildlife and Countryside Act 1981, as amended. The Ecological Appraisal concluded that there is a low population of slow worms on site, based on surveys carried out in 2010 and 2016. However, surveys were not carried out in accordance with best practice, and as such there is a risk that populations were underestimated. Best practice guidance is that surveys should be spread out across the season and that they should be undertaken within a certain temperature range. Both the 2010 and 2016 surveys were undertaken over a compressed period of time, and at least one was undertaken above the recommended maximum temperature. The proposed measures for translocation are not sufficient; best practice guidance recommends 60 suitable days as the minimum capture effort for a low population of slow worms.
15. It is understood from the Design and Access Statement that a reptile capture and translocation process has commenced, with reptile exclusion fencing erected around the proposed development area. This is of concern given the shortcomings within the Ecological Appraisal report noted above. The Design and Access Statement also states that the population can at least in part be retained in situ within the landscape buffer area (my emphasis). It is unclear what this means. Clarification is required as to what proportion of the population will be retained on site and if any animals are to be moved off site, details of the offsite receptor site should be provided. Identification of an offsite receptor area may require additional surveys. Details of measures to enhance the receptor site(s) for reptiles is also required, plus a detailed method statement for the translocation exercise to ensure it meets best practice.

Bats

16. All species of bats are fully protected under the Wildlife and Countryside Act 1981, as amended, and the Conservation of Habitats and Species Regulations 2010, making them European Protected Species. The Ecological Appraisal report states that three activity surveys were carried out in 2016; two dusk and one dawn. However, as two of these were conducted within one 24 hour period, they count as one survey, plus all three reported surveys were conducted over three consecutive days rather than being spaced out across the season. As such, they may not

provide a true reflection of bat activity across the site, and a precautionary approach to mitigation design is recommended.

17. Whilst no trees within the site were assessed as having bat roost potential, there are trees within the boundary of the site that do offer potential (to be retained) and records indicate that there may be roosts of common pipistrelle and brown long-eared bats adjacent to the site and/or within the boundary. The surveys recorded three species using the site for foraging and commuting, most notably along the western boundary.
18. Artificial light can negatively impact on bats through e.g. causing disturbance at the roost, affecting feeding behaviour, avoidance of lit areas and increasing the chances of bats being preyed upon. It is therefore recommended all lighting design should take account of national guidance, and if the Council is minded to approve, a lighting design strategy for light-sensitive biodiversity should be required. There should be no light spill onto the site boundaries or into the landscape buffer/ecology area.
19. Bat boxes and/or bricks should be provided in suitable locations on buildings and retained trees within the site.

Breeding birds

20. The site has the potential to support breeding birds. Under Section 1 of the Wildlife and Countryside Act 1981 (as amended), wild birds are protected from being killed, injured or captured, while their nests and eggs are protected from being damaged, destroyed or taken. To avoid disturbance to nesting birds, any removal of vegetation that could provide nesting habitat should be carried out outside the breeding season (generally March to August). If this is not reasonably practicable within the timescales, a nesting bird check should be carried out prior to any demolition/clearance works by an appropriately trained, qualified and experienced ecologist, and if any nesting birds are found, advice should be sought on appropriate mitigation. Alternative nesting habitat should be provided. Boxes should target species of conservation concern, e.g. swallow, swift and house sparrow.
21. The site offers suitable foraging habitat for owls. The proposal to provide two owl boxes is therefore welcomed.

Other species

22. The site has the potential to support hedgehogs. The hedgehog is listed as a Species of Principal Importance under Section 41 of the NERC Act and populations have shown a significant decline. A precautionary approach should be taken to site clearance and property boundaries should be made permeable to hedgehogs.
23. Himalayan balsam is present on site. This non-native species spreads quickly, altering the ecological balance of wetland habitats and is listed on Schedule 9 of the Wildlife and Countryside Act 1981, as amended; it is an offence to plant or otherwise cause it to grow in the wild. The species should be removed from the site in accordance with best practice.
24. The site is unlikely to support any other protected species. If protected species are encountered during development, works should stop and advice should be sought on how to proceed from a suitably qualified and experienced ecologist.

Mitigation Measures/Opportunities for enhancement

25. In addition to the mitigation measures discussed above, the site offers opportunities for enhancement that will help the Council address its duties and responsibilities under the NERC Act and NPPF. The enhancements recommended in the Ecological Appraisal report are appropriate and should be delivered through the design. It is recommended that an Ecological Design Strategy for the site should be required by condition, in line with BS42020, as should a Landscape Ecological Management Plan to address the long term management of these features.

Summary

In summary, mitigation strategies for dormice and reptiles and for the prevention of pollution of the on-site flushes and stream are required. Mitigation, compensation and enhancement measures should

be addressed through an Ecological Design Strategy with long term management and monitoring addressed through a Landscape Ecological Management Plan.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K Cole', with a long horizontal flourish extending to the right.

Dr Kate Cole MCIEEM
County Ecologist
East Sussex County Council