

Consultation Response: Kirklees Council Conservation & Design (Biodiversity)

Is this a response to an informal consultation request? Yes ☐ No ☒	
Date	28/03/2017
Officer responding	Tom Stephenson
Application number	2016/93338
Purpose	Review of submitted ecological information, pre-determination
Location	79, Hall Ing Lane, Honley, Holmfirth, HD9 6QW

Assessment

I have reviewed the ecological report that accompanies the application. The report indicates that the building on site is of moderate bat roost potential, and will therefore require further survey. The presence of Hey Wood/West Wood LWS is also noted. Impacts to this site and its ecological function (particularly as foraging habitat for bats along the woodland edge) will require protection.

Under the Conservation of Habitats and Species Regulations 2010 Kirklees Council has a duty to have regard to the EC Habitats Directive, which provides protection to certain species (e.g. bats, great crested newts and otters). The council also has a more general duty, under the Natural Environment and Rural Communities Act 2006, to have regard to the conservation of biodiversity, including restoring or enhancing populations and habitats.

Government guidance (ODPM, 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." and *"survey should be completed and any necessary measures to protect the species should be in place, through conditions and/or planning obligations, before the permission is granted."*

The body of case law confirms the duty to have regard to the EC Habitats Directive, i.e. will the proposals result in an offence under the EC Habitats Directive (or its transposition into UK legislation: the Conservation of Habitats and Species Regulations 2010), and the requirements of the government circular 06/2005 as quoted above. Officer's reports should therefore be clear and full enough to understand the issues. There is a suggestion that the 'derogation tests' that are applied by Natural England in determining if a EPS licence can be granted should be used by the LPA prior to determination, however this does not appear to be needed in great detail. In my opinion it is sufficient to determine if the 'favourable conservation status' (third derogation test) of the species in question will/can be maintained.

Ecological information submitted must therefore be sufficient to determine:

- a) if there is a possibility that proposals could result in an impact to European Protected Species (EPS) that would be unlawful under the Habitat Regulations 2010; and
- b) if offences are possible, is it also possible to mitigate those impacts within the scheme, such that the range and abundance of the species will be maintained.

The advice contained with government circular 06/2005 (ODPM, 2005) relates not only to EPS but also to species protected purely through domestic legislation (e.g. badgers, reptiles, water voles, and certain plants and invertebrates). Therefore, as well as the requirements above in relation to EPS, ecological reports supporting planning applications must consider potential impacts to other protected species and to biodiversity in general. Schemes will require mitigation for *all* negative ecological impacts, and to include measures to enhance biodiversity where this is feasible.

Recommendation

I note that the plans are indicative only. I have no objection to the proposals in principle, however further survey and assessment is required to determine if/how significant ecological effects will be fully mitigated. Potential ecological effects relate to:

- Possible impact to roosting bats;
- Possible impacts to woodland edge habitats used by foraging bats, including from light spill; and
- Impacts to the adjacent Local Wildlife Site, including from urban edge effects such as dumping garden waste.

The following conditions are recommended.

Suggested Condition(s)

1. No development shall take place (including any demolition, ground works, site clearance) until further ecological surveys following national good practice guidelines and sufficient to investigate a building of 'moderate' suitability for bats, has been submitted to and approved in writing by the local planning authority.
2. No development shall take place until an ecological design strategy (EDS) addressing means of avoiding ecological impacts from lighting, means of avoiding impacts to the adjacent Local Wildlife Site and the means of providing ecological enhancement has been submitted to and approved in writing by the local planning authority.

The EDS shall include the following.

- a) Purpose and conservation objectives for the proposed works.
- b) Review of site potential and constraints.
- c) Detailed design(s) and/or working method(s) to achieve stated objectives.
- d) Extent and location/area of proposed works on appropriate scale maps and plans.
- e) Type and source of materials to be used where appropriate, e.g. native species of local provenance.
- f) Timetable for implementation demonstrating that works are aligned with the proposed phasing of development.
- g) Persons responsible for implementing the works.
- h) Details of initial aftercare and long-term maintenance.

- i) Details for monitoring and remedial measures.
- j) Details for disposal of any wastes arising from works.

The EDS shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.

References

ODPM. (2005). *ODPM Circular 06/2005: Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and Their Impact within the Planning System*. London: Office of the Deputy Prime Minister.