

COMMITTEE: Development Committee

DATE: 9th July 2024

SUBJECT: Supplementary Report to Item 5.1 – Planning Application 50/24/00021

Hybrid (full and outline) application. Full application for the erection of 26 No. dwellings and formation of access, associated open space, landscaping and parking. Outline application with some matters reserved for 4 No. self build plots. Land At, Combe Batch, Wedmore, Somerset, BS28

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WARDS AFFECTED: Wedmore

1. Purpose of the Report

1.1 The purpose of this report is to seek the endorsement of the Development Committee, as competent authority of the Habitats Regulation Assessment Report prepared by Somerset Council originally dated 11th September 2020, updated in June 2023 and 21st May 2024. The update was based on further information (Clarkson and Woods, May 2024) (The full HRA is attached as Appendix 1). This is on the basis that the Committee considers that the proposed development would not have an adverse impact on the integrity of a European site.

2. Background

2.1 In accordance with the EU-UK Withdrawal Agreement and the European Union (Withdrawal Agreement) Act 2020, the transitional provisions under which European law such as the Habitats Directive and the Wild Birds Directive had effect in Great Britain ended on 31 December 2020.

- 2.2 Although neither the Habitats or Birds Directives now have the force of law in England, they will remain relevant in the interpretation and application of the Habitats Regulations 2017 unless and until Parliament otherwise modifies those Regulations.
- 2.3 The Local Planning Authority has a duty under Regulation 9 (1) of the Conservation of Habitats and Species Regulation 2017 (“2017 Habitat Regulations”). This duty is for all "competent authorities" (including Local Planning Authorities and other public bodies) to "exercise their functions which are relevant to nature conservation so as to secure compliance with the requirements of the Habitats Directives”.
- 2.4 Regulation 63 (1) of the 2017 Habitats Regulations states the following: “A *competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which:*
a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
b) is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications for that site in view of that site’s conservation objectives”.
- 2.5 There are effectively five stages to this assessment:
- Stage 1 – is the assessment of the likelihood of a plan or project having a Likely Significant Effect on a European site or its features and is the trigger for the need for ‘Appropriate Assessment’
 - Stage 2 – the ‘Appropriate Assessment’ is the detailed consideration of the potential effects of the plan or project in relation to the conservation objectives for the European Site to determine if there is likely to be an adverse effect on its integrity. Providing it can be demonstrated that with appropriate mitigation measures the plan or project would not have an adverse effect it can proceed.
 - Stage 3 – where an adverse effect cannot be demonstrated to be mitigated or where there is uncertainty the assessment would need to consider if there were other alternatives to the plan or project that would not give rise to an adverse effect on the integrity of the European Site

- Stage 4 – where there are no alternatives any imperative reasons of overriding public interest and compensatory measures would need to be considered, and if so -
- Stage 5 - consider whether all necessary compensatory measures have been secured to fully compensate for the negative effects of the proposal. The compensatory measures must not have a negative effect on the national network of European sites as a whole.

3. Current Position

- 3.1 The attached Habitats Regulations Report prepared by Somerset Council and sets out whether there would be any significant effect on the conservation objectives of the North Somerset and Mendip Bats SAC, Mendip Woodlands SAC, Somerset Levels and Moors Ramsar and SPA. The application site is located within Band C Consultation Zone of the North Somerset and Mendip Bats SAC.
- 3.2 Part C of the HRA report sets out the assessment of the implications of the proposed development on the qualifying features of the SAC's and their conservation objectives. In considering potential significant effects in the absence of mitigation, the report identifies potential significance of the loss or degradation of habitat and commuting lines and the impact of artificial lighting.
- 3.3 Whilst the report concludes that an Appropriate Assessment of the proposed development is required due to the effects of loss of foraging habitat, degradation of flight structure and introduced lighting having an adverse effect on the activity of both species of horseshoe bats from the North Somerset and Mendip Bats SAC. As a result a (Stage 2) Appropriate Assessment is required and forms Part D of the HRA report.
- 3.4 The Appropriate Assessment identifies the need for mitigation measures in respect of appropriate replacement habitat and a Landscape and Ecological Management plan (LEMP) to ensure adequate replacement and there is a need to ensure that lighting is appropriately designed to avoid any potential effects from light spill, including through the construction phase. The Council Ecologist is satisfied that these mitigation measures can be achieved through obligations in the 106 (in respect of the alternative habitat and the LEMP) and suitably controlled by an appropriate condition(s) relating to:
- an appropriately designed sensitive external lighting scheme.

3.5 Section 19 of the HRA report sets out the required mitigation through legal agreement and recommended conditions in detail which have been incorporated into the recommendation of the planning report for application 50/24/00021 which follows this item. These are shown below. Subject to the implementation of these measures the HRA report concludes no effects on the integrity of the North Somerset and Mendip Bats SAC are expected 'alone' or 'in combination'.

3.6 Secured through S106:

A minimum accessible habitat enhancement area for horseshoe bats of 2.5ha shall be provided at Rug Hill (OS Grid Reference ST 43774 49908). The replacement habitat shall be of long sward meadow, scrub and woodland. The siting and extent shall be agreed as part of the layout Reserved Matters. The layout of and a planting schedule for the habitat creation / enhancement of this open space will be submitted to and agreed with the local planning authority prior to work commencing on site. This enhancement will be planted at the earliest feasible date following permission unless otherwise agreed with the local planning authority.

Reason: To secure suitable compensation in the interests of the 'Favourable Conservation Status' of populations of European protected species in line with the Conservation of Habitats and Species.

3.7 Secured through condition

A Landscape and Ecological Management Plan (LEMP) for Rug Hill shall be submitted to, and be approved in writing by, the local planning authority prior to construction above damp-proof course level. The content of the LEMP shall include the following.

- a) Description and evaluation of features to be managed.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
- g) Details of the body or organization responsible for implementation of the plan.
- h) On-going monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

Reason: In the interests of the 'Favourable Conservation Status' of populations of European and UK protected species, UK priority species and habitats listed on s41 of the Natural Environment and Rural Communities Act 2006 and in accordance with Sedgemoor District Council Local Plan: Policy D20 - Biodiversity and Geodiversity.

Prior to commencement, a Lighting Strategy for horseshoe bats and other Biodiversity following Guidance Note 08/23 - bats and artificial lighting at night (ILP and BCT 2023) will be submitted to and approved in writing by the Local Planning Authority. The strategy shall:

- a) Be consistent with the zonation lighting plan as detailed in figure 21 of the Ecological Impact Assessment (Clarkson and Woods, May 2024).
- b) Show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the horseshoe bats and other light sensitive species using their territory or having access to their breeding sites and resting places.
- c) Include all exterior lighting, including street lighting, amenity and/or security lighting where necessary. Shields and other methods of reducing light spill as outlined in Steps 3-5 of Guidance Note 08/23 will be used where necessary to achieve the required light levels.
- d) Review the potential for light spill from internal lighting and include mitigation measures such as the installation of physical barriers, recessed internal luminaires, low-transmission glazing where internal lighting has the potential to cause light spill onto sensitive habitats.

Unless otherwise agreed in writing by the Local Planning Authority all external lighting shall be installed in accordance with the specifications and locations set out in the strategy and shall be maintained thereafter in accordance with the strategy.

Reason: In the interests of the 'Favourable Conservation Status' of populations of European and UK protected species, UK priority species and habitats listed on s41 of the Natural Environment and Rural Communities Act 2006 and in accordance with Sedgemoor District Council Local Plan: Policy D20 - Biodiversity and Geodiversity.

4. Consultation with Natural England

- 4.1 Natural England previously confirmed that they agreed with the conclusions of the HRA report (2024) and have subsequently raised no objection subject to the mitigation identified in the Habitats Regulations Assessment being secured.

5. Recommendation

It is recommended that the Habitats Regulation Assessment Report originally dated 11th September 2020, updated in June 2023 and 21st May 2024 be endorsed by the Development Committee, as the competent authority. In reaching the decision to agree the Habitats Regulation Assessment, the Council considers that the proposed development would not have an adverse impact on the integrity of a European site.

6. Appendices

Appendix 1 – Shadow Habitats Regulation Addendum – originally dated 11th September 2020 and subsequently updated 7th of June 2023 and 21st May 2024