

Response by Cam Valley Wildlife Group to further information received for application 08/02332/RES.

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Cam Valley Wildlife Group OBJECTS to this application. We wish the council to consider that the approval of this Reserved Matters application at this time would go against both the letter and the spirit of the outline consent. This is because procedural errors in the process so far have led to the situation where grant of full consent at this time could cause a significant impact on two Special Areas of Conservation (SACs), a European designation. Any significant impact on the SACs runs contrary to the decision made by the planning committee and Council to approve and permit outline consent, within which permission no significant impact on the SACs is permitted. The Council's officers may argue that the matter of ecological mitigation is a matter of satisfying conditions on the outline consent and therefore does not apply to the Reserved Matters application. However, this would be assuming that those conditions were capable of delivering the agreed mitigation and also failing to take into account the way that the procedural errors made at outline stage impact upon the decision to be taken on the Reserved Matters application now. It would fail to take into account the outcome of a decision to permit, or of the potential outcome of a decision to approve subject to further conditions to be agreed by officers.

It is clear to us that the Council has failed to undertake, at outline, an appropriate assessment in accordance with the law (see letter from Richard Buxton of 9th April 2009), and concurrently failed to adequately address the matter of adequate mitigation of potential impacts on the SACs through the Ecological Mitigation, Compensation and Management Plan (also called the Ecological Mitigation Statement) . It is quite wrong, in our view, for senior council officer, Geoff Webber, to have informed Councillors in the meeting in April that they did not need to understand or have explained to them the content of the letter to the Council from Environmental Law solicitor, Richard Buxton, in which the legal position was spelled out, for the Reserved Matters decision does indeed impact upon Councillors' responsibility and duty to uphold European law.

The unlawfulness of the outline permission aside, it is presently the case that it cannot be shown that the conditions of the outline consent can be fulfilled, and no results of follow-up surveys have been released to show how effective translocation attempts so far of reptiles and Fine-leaved Sandwort have been.

This monitoring is a requirement under the S 106 agreement. The terms of the permission are such that to permit the Reserved Matters application would allow site works and development to take place referencing the Ecological Mitigation Statement, which has itself been informed by a bat report which is seriously flawed and which is being examined by Natural England. We therefore consider that any consent is premature and is likely to lead to needless habitat destruction. Such destruction could be avoided if full consent is either deferred or denied, pending examination of the legality of the outline permission and the necessary consideration of the impact on the SACs.

The facts of the matter are this:

- Councillors made the decision that full mitigation for any impact on the SACs would be provided as a condition of outline permission
- council officers were delegated the power to draw up the necessary legal agreements and agree the Ecological Mitigation Statement (Ecological Mitigation, Compensation and Management Plan)
- the council officers failed to inform Councillors of the Council's responsibility to undertake an Appropriate Assessment of the impact on the SACs, which is a requirement where there is scientific doubt regarding significant impact on the SACs (see letter from Richard Buxton of 9th April 2009)
- the council officers failed to point out to Councillors that an appropriate assessment of the impact on the SACs had not been provided by the applicants when the outline proposals came before the committee, and failed to ensure that an appropriate assessment was subsequently undertaken prior to granting permission (see letter from Richard Buxton of 9th April 2009)
- Natural England has concerns over the information used to inform the delegated outline decision and needs to assess the requirement for a stage 1 appropriate assessment in the light of information not available to it or English Nature through consultation at the outline stage
- the Council officers did not obtain any impact analysis regarding the impact of lighting with respect to building heights, the exact positioning of street lighting, or ambient light levels before completing the Ecological Mitigation Statement and the Section 106 agreement; officers left the matters of both lighting and scale as Reserved Matters and assumed no significant impact on the basis of a flawed bat report and proposed mitigation unsupported by adequate technical information
- the mitigation required under the terms of the outline consent and applies to this Reserved Matters application relies on the Ecological Mitigation Statement, which does not take into account all matters that influence the impact on the SACs and is informed by a seriously flawed bat report
- Although the S106 agreement was drawn up at outline, before consideration of the Reserved Matters, it also covers procedures following grant of Reserved Matters consent, which allows development to

- commence so long as it references the Ecological Mitigation Statement
- The result is that Councillors have been put in the position that by permitting the proposed Reserved Matters application, they will allow development to start on a proposal which is likely, through its impact on SACs, to go against the outline decision taken by Councillors to allow a certain degree of harm, but not a significant impact on the SACs; such permission will also effectively ratify the unlawful decision to approve the outline consent without conducting an appropriate assessment on the SACs
 - An exercise that looks at the bat commuting route via the site and possible alternatives has been conducted (D. Porter) since the outline application was considered; this shows the likelihood that the site is a major flight route between them (which concurs with information in the Environmental Impact Assessment for the outline application), and that it may be the sole flight route between them; radio-tracking data from professional reports (Billington) of a bat travelling between the two SACs via one of the off-site compensation areas could be said to support this likelihood, and certainly does not conflict with it
 - The European Union is currently looking into the matter of a possible breach of the Habitats Directive with respect to this development in Radstock
 - Light contour mapping and projections, taking into account the use of domestic and commercial lighting outside the control of the council post-development, could have been used to show the likely impact on the commuting route for the light-sensitive greater horseshoe bats; the inclusion of a provision in the S 106 for covenants to be imposed on properties with regard to lighting could have been part of a light reduction strategy; Councillors could have made an informed decision regarding magnitude of impact
 - With no evidence to the contrary, it must be assumed that there will be a significant impact on the SACs

Some of our reasoning is set out in more detail below.

The Reserved matters include **the positions of street lighting**, which is listed as a Conservation Area consideration under Condition 9 of the outline consent. The exact positioning of lamp posts will impact the connecting route between SACs, but the mitigation measure outlined in the Ecological Statement has not been tested through light contour mapping. Similarly, the matter of **building scale** is an issue under consideration at the detailed stage, yet the impact of the light spill from high buildings on the bat commuting corridor between SACs has not yet been determined.

The S 106 gives reasons for granting outline approval, which includes the following in Reason for Approval 6 of the Delegated Report:

"mitigation of any adverse effects of the development and for a programme of

compensation measures... will be secured through the implementation of an Ecological Mitigation, Compensation and Management Plan set out in a section 106 agreement...any residual harm to ecological interests would be outweighed by the... benefits arising from the proposed development..." .

The Update report to Councillors for the outline decision referred to the residual harm thus:

" a net harmful effect upon the local ecology". It was this net harm to local ecology that Councillors approved in the decision made. It is clear that any significant effect on a European designated site goes further than an effect on the local ecology.

The bat report used by officers to inform the Ecological Mitigation Statement and the final outline decision was seriously flawed. This was not recognised by the consultant brought in by the Council. His comments are reported in the Delegated Report. He is only prepared to go as far as to state that contravention of the Habitats Directive is not implied, as the bat report and the bat mitigation measures show that there appears to be no disturbance to major roosts or flight routes. Natural England have concerns about the bat report, but it was not made available to Councillors for the outline decision. A stage 1 appropriate assessment is required where a significant impact on SACs cannot be excluded, as is the case here (see letter from Richard Buxton of 9th April 2009).

Summary

Cam Valley Wildlife Group wishes to bring to the Council's attention the fact that it was assumed at outline that there would be no significant impact upon the SACs - the Council did not make the decision that a significant impact on SACs was outweighed by other material considerations. Any significant impact on the SACs must, therefore, be fully mitigated and compensated in order to conform with Approval Reason 6 of the Delegated Report.

The impact of noise and the Reserved Matters of scale (lighting from tall buildings and ambient light levels) and street lighting positioning have not been examined - it has merely been assumed that mitigation will be appropriate and impact minimal, which is outside the legal requirement to leave no reasonable scientific doubt regarding consideration of the impact on SACs in this circumstance (see letter from Richard Buxton to B&NES of 9th April 2009).

Reserved Matters consent will allow development to take place following a Construction Method Statement that must reference the Ecological Statement (Condition 2), but the Ecological Statement has not been drawn up in accordance with any stage 1 appropriate assessment of the impact on the SACs by the Council, which is legal requirement in the case where a significant impact cannot be

excluded, as is the case here (see letter from Richard Buxton to B&NES of 9th April 2009). **The Ecological Statement was drawn up with reference to a seriously flawed bat report. Natural England should now be asked to consider the matter of a stage 1 appropriate assessment and report back to the Council. A significant adverse impact on the SACs and needless ecological destruction could be caused by approval of Reserved Matters at this time, which would be against both the letter and spirit of the outline consent.**

Environmental Law solicitor Richard Buxton has set out in his letter to the Council of 9th April 2009 the case for the unlawfulness of the original outline decision. He refers to a specific European Court of Justice case. It is clear to Cam Valley Wildlife Group from his letter and from our knowledge that the Habitats Directive is in danger of being breached should this Reserved Matters application be given permission. This is a very serious matter, and one to which we hope the Council will give due weight. The upholding of European law in respect of greater horseshoe bats and the impact on Special Areas of Conservation is under the auspices of Councillors on the Planning Committee. International Law is implemented at local level and we trust that councillors will do their best to make sure that it is upheld in B&NES.

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