



Appeal Decision

Site visit made on 12 August 2022

by James Blackwell LLB (Hons) PgDip

an Inspector appointed by the Secretary of State

Decision date: 24 October 2022

Appeal Ref: APP/P1615/W/22/3293181

Old School, School Lane, Longhope GL17 0LJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Colburn Homes Limited against the decision of Forest of Dean District Council.
 - The application Ref P1105/21/FUL, dated 9 June 2021, was refused by notice dated 28 January 2022.
 - The development proposed is construction of 4 no dwellings.
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Decision

1. The appeal is dismissed.

Background

2. The appeal site is situated near to a new housing development which was consented under reference P0471/17/FUL. The appeal site originally formed part of this planning application, but was ultimately removed from the application land. This was because the appeal site was considered important to a nearby maternity roost of lesser horseshoe bats, which in turn meant adverse effects on the integrity of the Wye Valley and Forest of Dean Bat Site Special Area of Conservation could not be ruled out. Approval of this earlier application was therefore contiguous on the non-development of this land. The appeal application now seeks to permission to erect 4 new houses on the same land. Notwithstanding the site's history in this regard, I have determined the appeal application in isolation, based on its own merits.

Main Issue

3. The main issue is the effect of the proposal on the Wye Valley and Forest of Dean Bat Site Special Area of Conservation, with particular regard to a maternity roost for lesser horseshoe bats.

Reasons

Appeal Site

4. The appeal site is located within the settlement boundary of Longhope, and historically comprised a playground which was used in conjunction with a former adjacent school. The abundance of trees, scrub and foliage in and around the land provides an extensive canopy spread over much of the site.
5. The Old Rectory Care Home, which is situated to the north-east of the appeal site, is home to a maternity roost of more than 320 lesser horseshoe bats. This roost is understood to help support the lesser horseshoe bat populations found

within the Wye Valley and Forest of Dean Bat Site Special Area of Conservation (SAC), as they are known to exhibit a metapopulation structure which frequently switch between roosts. In turn, this means any development which impacts on the maternity roost near to the appeal site has the potential to adversely affect the integrity of the wider SAC.

Potential Impact

6. Given its verdant and sheltered credentials, the appeal site currently provides sheltered flight paths for the bat colony between the maternity roost in the Old Rectory Care Home and a number of nearby high-quality foraging habitats. Indeed, survey data captured by the appellant demonstrates that the lesser horseshoe bats currently use navigational routes around the appeal site and its boundary habitats to access foraging habitat to the south. The survey data also demonstrates that the appeal site itself provides some limited foraging opportunities for juvenile bats.
7. Given the appeal site's importance to the maternity bat roost, Natural England (NE) considers that development of the land would have an adverse effect on the integrity of the SAC, and therefore objects to the proposal. It considers that the development would result in the loss of important foraging habitat, which is considered particularly detrimental to juvenile bats. This is because their early flights are typically short in duration, which means foraging habitat is needed in close proximity to their roost.
8. NE is also concerned that flight lines would be adversely affected by lighting from the proposal, owing to the increased human activity associated with the additional housing. Excess lighting can risk delay to bats reaching favoured foraging habitats, which in turn can lead to bat starvation and roost abandonment. NE has also raised concerns regarding cat predation, as lesser horseshoe bats commonly fly low to the ground when crossing open spaces soon after emergence. It claims such risk would be exacerbated by the introduction of additional housing in the proposed location, due to the potential increase in the number of domestic animals.
9. Notwithstanding the proposed mitigation, and adopting the necessary precautionary principle, it is therefore not possible to rule out likely significant effects from the development on the integrity of the SAC. This baseline position is consistent with government guidance¹, which says the integrity of a site will be adversely affected if a proposal could significantly disturb a population of designated species, or else harm a site's ecological connectivity with the wider landscape.
10. The proposed mitigation measures and compensatory habitat therefore need to be properly assessed to determine whether they would adequately address any potential adverse effects on the SAC.

Mitigation – Habitat Creation

11. The proposal would deliver approximately 0.35ha of new foraging habitat for lesser horseshoe bats, to compensate for the loss of approximately 0.15ha of existing habitat on site. The compensatory habitat would be located to the south of the appeal site, and would include parkland, scattered trees and an orchard. It would be situated adjacent to the tributary of Longhope Brook,

¹ Guidance, Habitats Regulations Assessments: Protecting a European Site, February 2021

which is understood to be a key foraging area and navigational feature for the lesser horseshoe bats. The newly created habitat would be linked through a series of green infrastructure corridors, which would include newly planted native species rich hedgerow along the western boundary of the site, as well as along the boundary with Rectory Meadow. The creation and subsequent management of the newly created habitat would be secured through a long-term Landscape and Ecological Management Plan (LEMP).

12. Whilst in time, the compensatory habitat would conceivably provide more extensive foraging opportunities for the colony of lesser horseshoe bats than currently exist, I am conscious of the time it will take for the newly created habitat to mature and properly establish. Indeed, the management objectives of the proposed LEMP seek to create tall hedgerows with a minimum height of 2-5 metres, and a minimum width of 2 metres. It would invariably take many years for these parameters to be achieved, noting that the LEMP for the adjacent housing development is for a period of 10 years. Even accounting for the adaptability of lesser horseshoe bats, this is a concern, given the importance of the hedgerow to the integrity of the flight paths between the maternity bat roost and the foraging habitat to the south of the site.
13. The content of any LEMP would also be left to condition. Whilst not unusual in itself, this does mean there is a lack of site-specific evidence detailing how these flight paths would be adequately protected during the period it takes for the hedgerow to properly mature. This means I am unable to conclude with any degree of certainty that the flight paths would be adequately protected throughout this intervening period.

Mitigation - Lighting

14. The North Somerset and Mendip Bats SAC Guidance² recommends that introduced light levels from new development should not exceed 0.5 lux within habitats and features used by lesser horseshoe bats. Whilst the appeal site itself would not be governed by this guidance (due to its location), the guidance has nonetheless helped inform the appellant's Lighting Report and general lighting strategy.
15. When assessed in combination with the neighbouring housing development already consented under reference P0471/17/FUL, the appellant's Lighting Report demonstrates that average light levels across the development site would reach 0.720 lux at ground level, breaching the recommended 0.5 lux level. Maximum light output at certain spots around the appeal site would also increase from 2.580 lux to 4.6 lux at ground level, and from 3.2 lux to 4.020 lux at 1.8m above ground.
16. Whilst the maximum light outputs are concentrated to specific locations, the diagrams within the appellant's Lighting Report do show that some of these correlate with several spots along the green corridor between the new development and the new housing development to the south. At ground level, the report also indicates a notable increase in light output along the flight path running along the western boundary of the appeal site. Given that these locations are important to the navigational routes between the maternity bat roost and the foraging habitat to the south, this is again a concern.

² North Somerset and Mendip Bats Special Area of Conservation (SAC) Guidance on Development: Supplementary Planning Document (January 2018)

17. The lighting strategy proposes tall hedgerow planting along boundaries to the development to help reduce the impact from the additional domestic lighting. Nonetheless, and as mentioned above, the newly planted hedgerow would take many years to properly mature. I note the lighting report has incorporated a 20% light transmission factor to account for the time it will take for newly planted scrub to develop. However, given the high level of light output within certain locations along the bat flight paths, on the evidence, I am not convinced that this allowance is sufficient. Given the time it would take for the hedgerow to reach the desired height of 1.8m, the increase in light levels along the green corridor to the south of the appeal site would not be properly mitigated for several years to come. Yet there is little evidence before me to explain how these increased light levels would impact on the bat colony during this intervening period. Once again, this means I cannot be certain that the integrity of the bat colony would not be adversely impacted during this time.

Cat Predation

18. There is little evidence to substantiate NE's conclusion that the colony of lesser horseshoe bats would be vulnerable to predation from cats. The appellant has also cited several leading texts which don't appear to support NE's supposition in this regard. Without any substantive evidence to the contrary, I therefore do not consider this a particular risk to the maternity roost.

Conclusions

19. Notwithstanding this point, for the reasons outlined above, I am unable to conclude with certainty that the maternity roost of lesser horseshoe bats would not be harmed, particularly during the time it would take for the habitat mitigation and compensatory habitat to properly mature. In turn, I cannot exclude the possibility of likely significant effects on the integrity of the SAC. Moreover, as the proposed development is for just four new dwellings, there would be no imperative reasons of overriding public interest which would justify permission being granted in the absence of adequate mitigation. On this basis, I am left with no option but to conclude, as competent authority, that the proposal would have a significant adverse effect on the integrity of the SAC.
20. The development would therefore conflict with Policies CSP.1 and CSP.2 of the Council's Core Strategy (2012) and Policy AP.7 of the Council's Allocations Plan (2006 – 2026). Together, these policies seek to ensure development adequately safeguards protected species and their supporting habitats. The development would conflict with Policy PE2 of the Longhope Parish Neighbourhood Development Plan (2016 – 2026), which says development should respect the Wye Valley and Forest of Dean Bat Special Area of Conservation. The development would also conflict with the habitat conservation objectives of the National Planning Policy Framework (2021) and the Planning Practice Guidance. Finally, the development would fail to overcome the appropriate assessment required under Regulation 63 of The Conservation of Habitats and Species Regulations 2017 (as amended).

Conclusion

21. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal should be dismissed.

James Blackwell

INSPECTOR