

**LATE PAPERS FOR DEVELOPMENT CONTROL COMMITTEE**  
**27 November 2018**

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| ITEM No: 01  | Application: S.18/0492/FUL |
| Address:<br>Site Of The Former Ship Inn, Bristol Road, Stonehouse, Gloucestershire |                            |

**SENIOR BIODIVERSITY OFFICER:**

Amend condition 20:

No development, site clearance or soil stripping shall take place other than in STRICT accordance with the details agreed for the hibernation bat box and the details contained in the Bat Survey Report, by Wild Service, dated 16<sup>th</sup> October 2018, Section 4, as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

REASON: To ensure that Bats and Water-voles are safeguarded in accordance with the Wildlife and Countryside Act 1981 as amended, Circular 06/2005, the National Planning Policy Framework (in particular section 11), and Policy ES6 of the Stroud District Local Plan 2015, and in order for the Council to comply with Part 3 of the Natural Environment and Rural Communities Act 2006.

Additional comments in support of officer recommendation:

The ecological appraisal has highlighted that the canal has been found to offer suitable breeding habitat for Great crested newts (GCN) after a Habitat Suitability Index survey was undertaken. As the water body has been considered suitable for breeding GCN a presence/ absence survey is required to be undertaken ideally prior to a planning decision being granted.

GCN surveys can only be undertaken between the months of March and June when the newts are breeding within water-bodies, however, this would lead to substantial delays in enabling the scheme to be granted planning consent.

The canal does have a large stock of fish and waterfowl and therefore the likelihood of GCN presence becomes less likely and the over all risk over the species being present is lowered. The closest known population of GCN at the Stonehouse Newt Ponds - Key Wildlife Site are fragmented by the a significant dispersal barrier the A419 road. The proposed development will not impact the canal itself but will result in the destruction of terrestrial habitat and as such if newts are present a mitigation licence would be required for the works to proceed lawfully. GCN are afforded strict legal protection and the LPA has a duty to consider them ahead of any planning permission being granted in accordance with the Conservation of Habitats & Species Regulations 2017 and furthermore Circular 06/2005 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.*".

However, in this instance and due to the above points that suggest that the risk of GCN being present is lowered, it is recommended that the following could be acceptable and would enable to the LPA to discharge it statutory duty:

A worst case scenario mitigation scheme could be developed that is sufficient to avoid any impacts to the largest population of GCN scenario that the site could possibly accommodate. This mitigation strategy would need to be sufficient to mitigate any likely findings the surveys could bring up and would need to be sufficient to enable, if GCN are present, a licence from Natural England to be obtained after planning consent has been granted

On the 5<sup>th</sup> October 2018 a Great Crested Newt Mitigation Method Statement, by Wild Service and Plan for Great Crested Newts was submitted to the LPA for consideration. The information submitted demonstrates the following mitigation proposals: an area of terrestrial newt habitat will be left with a 1.5 metre margin along the canal edge that will be managed exclusively for GCN. Furthermore the mitigation method statement details both times and methods of working to avoid harm to GCN. This information enables the LPA to ensure that the worst-case scenario risk to GCN has been adequately assessed and that sufficient mitigation in the form of terrestrial newt habitat can be delivered if the conditioned GCN surveys prove that GCN are present within the canal.

If Great Crested Newts are found to be present within the adjacent canal the applicant will be required to obtain a mitigation licence from Natural England in order for the development to proceed lawfully. A licence can only be granted once full planning permission has been obtained and all relevant wildlife conditions have been discharged. Furthermore the development will need to be able to meet the three tests of derogation as detailed within the Conservation of Habitats & Species Regulations 2017:

A licence can only be agreed if the development proposal is able to meet three tests:

1. *the consented operation must be for 'preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment'; (Regulation 55(2)(e))*
2. *there must be 'no satisfactory alternative' (Regulation 55(9)(a)); and*
3. *the action authorised 'will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range' (Regulation 55(9)(b)).*

Great Crested Newts, their breeding places and resting places are fully protected under the EU Habitats Directive and the UK Habitats Regulations and as such, Local Planning Authorities now have a duty to address the three tests contained in the EU Habitats Directive and UK Habitat Regulations when determining planning applications affecting European Protected Species.

The actions and surveys conditioned above are necessary to fulfil the requirements of one 55(9)(b) of the three derogation tests of the Conservation of Habitats and Species Regulations 2017, specifically that "the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range".

I am satisfied that this derogation test can be met by this application so long as the actions conditioned are implemented in full.

Regulation 55(2)(e) which states: a licence can be granted for the purposes of "preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment".

Regulation 55(9)(a) which states: the appropriate authority shall not grant a licence unless they are satisfied "that there is no satisfactory alternative".

Case law indicates that the process of consideration of the 3 derogation tests should be clearly documented by the LPA. It is my view that if the case officer feels that the application accords with Local Planning Policy all 3 derogation tests have been adequately assessed in a accordance with Natural England guidance.

Bats

Comments relate the following document:

Bat Survey Report, by Wild Service, dated 16/10/18

A single Soprano pipistrelle bat was observed emerging from the alder tree within the site. The tree is proposed to be felled as part of the development and as such the felling of the tree will result in the destruction of the bat roost for Soprano pipistrelle. Soprano pipistrelle are a species considered to be common and relatively widespread, however, all species of UK resident bats are protected under the EU Habitats Directive and the UK Habitats Regulations. The loss of the roost within the tree will need to be mitigated in the form of the erection of bat boxes within the site. It is proposed that prior to felling of the tree a hibernation bat box will be erected on the canal bridge and will be retained in perpetuity, further to this the proposed dwellings will also have bat boxes erected as detailed within the submitted Soft Landscaping Plan.

In order for works to proceed lawfully the applicant will be required to obtain a mitigation licence from Natural England. A licence can only be granted once full planning permission has been obtained and all relevant wildlife conditions have been discharged. Furthermore the development will need to be able to meet the three tests of derogation as detailed within the Conservation of Habitats & Species Regulations 2017:

A licence can only be agreed if the development proposal is able to meet three tests:

1. *the consented operation must be for 'preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment'; (Regulation 55(2)(e))*
2. *there must be 'no satisfactory alternative' (Regulation 55(9)(a)); and*
3. *the action authorised 'will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range' (Regulation 55(9)(b)).*

All species of bat are European Protected Species and, as such, Local Planning Authorities now have a duty to address the three tests contained in the EU Habitats Directive and UK Habitat Regulations when determining planning applications affecting European Protected Species.

The actions conditioned above are necessary to fulfil the requirements of one 55(9)(b) of the three derogation tests of the Conservation of Habitats and Species Regulations 2017, specifically that "the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range".

I am satisfied that this derogation test can be met by this application so long as the actions conditioned are implemented in full.

Regulation 55(2)(e) which states: a licence can be granted for the purposes of "preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment".

Regulation 55(9)(a) which states: the appropriate authority shall not grant a licence unless they are satisfied "that there is no satisfactory alternative".

Case law indicates that the process of consideration of the 3 derogation tests should be clearly documented by the LPA. It is my view that if the case officer feels that the application accords with Local Planning Policy all 3 derogation tests have been adequately assessed in accordance with Natural England guidance.

Public comments:

Objection, as attached which was directly sent out to Members on 21 November.

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| ITEM No: 02   | <b>Application: S.18/1935/REM</b> |
| <b>Address:</b><br>Parcel H3 Land West Of Stonehouse, Grove Lane, Westend, Stonehouse |                                   |

**Withdrawn 21<sup>st</sup> November 2018.**

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| ITEM No: 03   | <b>Application: S.18/1937/REM</b> |
| <b>Address:</b><br>Parcel H3, H4, H5, H8, H9 And H10 Land West Of Stonehouse, Grove Lane, Westend, Stonehouse |                                   |

**Withdrawn 21<sup>st</sup> November 2018.**

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| ITEM No: 05  | <b>Application: S.18/1009/FUL</b> |
| <b>Address:</b><br>Land Adjacent To 40 And 41, Brimley, Leonard Stanley, Gloucestershire |                                   |

Upon receipt of completed Unilateral Undertaking, the recommendation is changed to Permission and condition 3 (Severn Estuary Mitigation) and associated informative removed.

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| ITEM No: 06   | <b>Application: S.18/1011/FUL</b> |
| <b>Address:</b><br>Land To The Rear Of 33 And 34, The Daffodils, Kings Stanley, Gloucestershire |                                   |

Upon receipt of completed Unilateral Undertaking, the recommendation is changed to Permission and condition 3 (Severn Estuary Mitigation) and associated informative removed.

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| ITEM No: 07   | <b>Application: S.18/1678/FUL</b> |
| <b>Address:</b><br>Land Adjacent No.24, The Close, Whitminster, Gloucestershire |                                   |

Upon receipt of completed Unilateral Undertaking, the recommendation is changed to Permission and condition 3 (Severn Estuary Mitigation) and associated informative removed

Submission of a Drainage Strategy

Water Resource Engineer – The applicant has submitted sufficient information regarding the surface water drainage. No further observations.

Following the submission of revised plans Whitminster Parish Council Object

Full details of all statutory consultations and public representations are available to view on the electronic planning file.

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| ITEM No: 09   | <b>Application: S.18/2270/DISCON</b> |
| <b>Address:</b><br>Dudbridge Industrial Estate, Dudbridge Road, Stroud, Gloucestershire |                                      |

**Officer comments:**

1. Add Informative to decision:

Prior to the demolition of any building or structure (even in part) a license will be needed from Natural England to ensure the protection of bats.

2. Paper copies of the submitted Code are available. These will be distributed at the start of the meeting alternatively copies are available in the Planning department.