

[REDACTED]

From: Liz Rogers [REDACTED]
Sent: 11 April 2019 11:31
To: Michael Eastham
Subject: RE: AL/129/18/OUT Ecology follow up - Land East of Orchard Gardens, Woodgate

Morning Michael.

I have read through the applicants comments and I will try to address each point;

1. Reptiles

This site was been identified as being suitable for reptiles and due to the bordering habitat which was surveyed as having a very high reptile population and being a key receptor site for reptiles for the district further surveys are required. We have been involved with this site through the previous applications and when we first identified that reptile surveys were needed on the site, it was cleared removing (therefore destroying) the habitat onsite and any reptiles that were there. The Preliminary Ecological Appraisal (by Arbtech) which was undertaken stated that the site represents good foraging areas, basking areas and refugia for reptiles and reptiles including adder, grass snakes, common lizard and slow worms are protected within the Wildlife and Countryside Act (1981) as amended making it illegal to

- Intentionally kill, injure or take a reptile.
- Possess or control a live or dead reptile, or any part of a reptile
- Intentionally or recklessly damage, destroy or obstruct access to any structure or place which they use for shelter, or protection or disturbing these reptiles while they use such place
- Sell, offer for sale or advertise for live or dead reptile

Also following Natural England's guidance surveys for reptiles should be undertaken if;

- The site has habitat suitable for reptiles
- Will alter the water levels of the site or surrounding area
- Will break apart suitable habitat for reptiles
- Distribution and historical reports suggest they may be present.

It is clear that this site meets these requirements, and due to the legal protection reptiles hold activity surveys are required.

2. CIEEM Membership - I can confirm I have associate membership within the CIEEM which is under my full Name Elizabeth Rogers.

3. Barn Owls – Agreed

4. Bats – Agreed a condition should be used to ensure the hedgerows are protected and a 5m buffer is in place to ensure this. (further details can be found in my previous comments.

5. Nesting Birds – agreed standard condition to be used. Should be applicable from time of permission to completion of site

6. Ponds – as detailed within our comments we require the details of who undertook this assessment and wrote the report, the company they work for and there membership status within the CIEEM to ensure the Wildlife and Habitat Improvement and Mitigation Summary is created by a qualified ecologist with the training and experience to ensure that the mitigation is suitable and beneficial for the site. Following government guidance we need to ensure there is no net loss in biodiversity from development and new guidance requires a net gain in biodiversity for development sites. Considering this the installation of a wildlife pond is a useful and efficient way to achieve this and will benefit the site will improving biodiversity.

7. LEMPs – agreed to condition.

In summary protected species including reptiles are a material consideration within the planning process and currently we have not been provided with enough information for us to determine whether protected species would be harmed by the proposal and whether mitigation will be required. In the absence of appropriate supporting information the proposal is contrary to Government policy and guidance contained in the ODPM Circular 06/2005, the NPPF and NPPG.

Kind Regards

Liz



Liz Rogers
Environment Officer
Environmental Protection
Chichester District Council

<http://www.chichester.gov.uk>



From: Michael Eastham [mailto:Michael.Eastham@arun.gov.uk]
Sent: 08 April 2019 17:09
To: Liz Rogers
Cc: Claire Potts
Subject: FW: AL/129/18/OUT Ecology follow up - Land East of Orchard Gardens, Woodgate

Hi Liz,

We have received the following reply from the applicant to your consultation response to AL/129/18/OUT.

I look forward to receiving your response.

Kind regards,

Michael

From: T Croucher [REDACTED]
Sent: 08 April 2019 17:00
To: Michael Eastham
Subject: AL/129/18/OUT Ecology follow up

Dear Mr Eastham

AL/129/18/OUT

Please see below our overview of the situation followed by detailed comments on Ms Rogers' report.

Overview

The field has no protected habitat other than the eastern tree/ditch line which is only protected by a TPO. We believe that if considered fully and logically we have, with this and the other statements included within the application, established that allowing outline planning permission for the development ensures a diverse habitat is both provided and protected for the future. It therefore complies with National, District and Neighbourhood planning policies for both housing AND biodiversity in a way that the status quo does not.

In particular we urge you to fully consider the following points before moving on to Ms Rogers' comments:

- a) The lawful use of the land allows full clearance of all vegetation other than the trees along the east boundary which are subject to a TPO.
- b) Pasture or arable land provides little biodiversity compared to a mosaic of gardens, greenspace and an enhanced tree and ditch line.
- c) Mitigation principles and detailed measures are provided in Appendices 2A, 2B, and 2C of our application and provide for a range of species including common reptiles
- d) The layout has been adapted so that a biodiversity corridor (minimum depth 10m) can be provided along the east boundary and provide connections to North and south. It will be enhanced by having the openspace alongside it rather than as a separate non diverse green in front of the houses.
- e) Further details can properly be conditioned as part of a detailed application.
- f) Provision of the habitat enhancements can be ensured by s106 undertakings thereby ensuring the biodiversity corridor with enhanced planting is protected for a wide range of species in the future. This clearly demonstrates that the development proposal will not give rise to any significant harm to the integrity or function of the Biodiversity Corridor in Aldingbpourne Parish Neighbourhood Plan.

The following Paragraph references are to Ms Rogers' report uploaded to the website on 21 Feb 2019

Paragraph 1

The application is to be determined as at the application date of 28 November 2018. The previous nature of the site is not in dispute other than only part of the site provided potential basking for reptiles. The rest was overgrown. Had that been allowed to continue the basking would have also become overgrown. The site would no longer have had any potential for reptiles.

Paragraph 2. As at the date of application the site has been legally cleared. We note that Ms Rogers has not, to date, shown that she is aware that there is any difference in the protection afforded to different species of reptiles so we again restate:

All reptile species receive some level of protection under UK law. Two of the six reptile species native to the UK, sand lizard (*Lacerata agilis*) and smooth snake (*Coronella austriaca*), receive full protection. In practice, this level of protection also serves to provide some level of protection for their habitats. The habitat for these two species is not present on this site or in the wider area.

The other "common reptile" species native to the UK are: adder (*Vipera berus*); grass snake (*Natrix natrix*); common lizard (*Lacerta vivipara*); and slow-worm (*Anguis fragilis*). They are protected from intentional killing or injury and against handling for sale **however common reptile habitat, and access to it, is not protected.**

There is no legal requirement for operations on site, including on site handling of the common reptiles, to be supervised by a qualified ecologist. During clearance a specialist fixed height, tracked, brush cutter was used to reduce the risk of cutting into reptiles. Spotters were present when a tracked digger was used. There is therefore very little likelihood of any actual killing or injury.

In again making an accusation that "there is a high likelihood" that a criminal offence has occurred your respondent appears to not understand the legislation or is unable to apply it to the facts in this case.

Paragraph 3

Agreed other than "removal" rather than "destruction" would have been a more balanced choice of wording .

Paragraph 4 Reptile Mitigation Principles Statement Nov2018 (Appendix 2C of application The Reptile Mitigation Principles Statement follows and build on the principles in the Reptile Mitigation plan dated 30 March 2017 by Nataile Evans BA(Hons) MA MRSB which was reviewed by Chris Formaggia Bsc(Joint Hons), MA,CBiol CEnv MCIEEM (Appendix 2A of application) As far as we are aware your respondent has no status within the CIEEM. They have not stated that the contents of the mitigation strategy, other than point 3, are unacceptable. They have not stated why Point 3 is not acceptable. In "requiring" an assumption that there was a good population of reptiles on site is your respondent is either ignoring or misinterpreting the reports referred to in the Reptile Population Assessment section of our Reptile Mitigation Principles Statement. In any case there is no planning policy requirement that mitigation has to provide parity. There is provision for mitigation to be proportional and pragmatic. For an outline application we have demonstrated the principles that can apply. A detailed reptile management plan, subject to supervision by a member of the CIEEM could reasonably be conditioned.

Paragraph 4

For AI/111/16 Natural England were consulted by your predecessor at the last minute. They were selectively asked to comment only on the assumptions made by your respondent. They were not presented with the applicants latest submission at that point so did not have the opportunity to consider the full picture. You will no doubt be aware that the purpose of Natural England's Standing Advice to planning authorities is to enable you to approve an application that complies with that advice without having to refer it to them. It does not mean that applications that do not comply cannot be approved. If your respondent wishes to quote or rely on Natural England's advice then Natural England should have been properly consulted by being given both views in full

Paragraph 5

We submit that your respondent has not given any concrete reasons to demonstrate that our report, or the principles or methodology within it, are inadequate. Our proposal already demonstrates the links Northwards using enhancements to the existing East tree/ditch line. It also includes provision for wildlife movement in and out of gardens and already shows 6 specific refugia for reptiles. In requiring a 10m unmanaged grass and scrub strip your respondent does not appear to realise that an unmanaged area including scrub would become overgrown and not provide good reptile habitat. It will require management with occasional cutting. That can be detailed as part of the open space management plan. In accordance with your respondents previous "requirement" we have amended the layout to allow a 10m buffer zone along the entire East boundary. Our proposals already include the 6 specific refugia. In calling for log piles as alternative habitat for reptiles your respondent has either not fully considered our proposal or is misinterpreting it. An outline application only needs to establish the principles that would apply. It would be adequate for an outline application to require full detail as a condition. Whilst not a legal requirement it is considered best practice to have a qualified environmentalist involved when development operations take place and that can of course be reasonably conditioned.

Paragraph 6 Barn Owls

Agreed. This is already included in our Appendix 2B.

Paragraph 7 Bats

There is only one hedgerow on site which is part of the Eastern Tree/ditch line. Protection of that, together with the creation of green space alongside it is an overriding principle of this application. We agree that conditions are appropriate and suggest that a detailed landscaping plan including habitat enhancement planting and lighting can be conditioned. Already included in our Appendix 2B

Paragraph 8 Nesting Birds

Agreed. standard condition to apply. Already included in our Appendix 2B

Paragraph 8 Wildlife and Habitat Improvement and Mitigation Summary (Appendix 2B of application)

Your respondent has not given any concrete reasons to demonstrate that our report is inadequate. Your respondent has not given any justification for requiring an onsite wildlife pond to benefit amphibians. There are no amphibian records to suggest our site is part of any migration route between ponds. There is no loss of a pond on site. The retention and enhancement of the ditch will ensure that there is better provision for amphibians than currently exists. Our contention remains that the legal use of the land allows full clearance of all but the protected trees

Paragraph 9 LEMP Agreed this can be conditioned along with a construction management plan

Yours sincerely

David Loosley

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