

Simon J Davis
Arun District Council,
Civic Centre,
Maltravers Rd,
Littlehampton,
West Sussex,
BN17 5LF

26th July 2021

Ref: DF/THK/LR/SD01

Dear Simon,

RE: AL/20/21/PL - WINGS NURSERY, LINDSEY ROAD, WOODGATE, NATURAL ENGLAND COMMENTS

I have been asked by Thakeham Homes to review Natural England's comments dated 20th July 2021 in respect to the above planning application, which specifically relate to the potential for an adverse effect on the integrity of Singleton and Cocking Tunnels SAC and SSSI.

Natural England have advised that additional information is required on the following aspects of the proposal before it can be ascertained that the proposal would not result in an adverse effect:

- Measures to avoid work taking place an hour before, during and an hour after sunset and sunrise.
- Measures to ensure that lights will not impact areas used by bats.
- The protection of valuable habitat features through the implementation of secure buffers.

I shall address each of the points in turn. However, it is worth re-iterating that barbastelle bats, the qualifying feature of the SAC has not been recorded on, or near, the application site.

Work taking place an hour before, during and an hour after sunset and sunrise

Draft Condition 5 for the scheme states:

No construction activities shall take place, other than between 08:00 to 18:00 hours (Monday to Friday) and 08:00 to 13:00 hours (Saturday) with no works on Sunday or Bank Holidays. In addition, there shall be no working during the hours of darkness even if that falls within the above time periods.

Thakeham Homes, adopting the precautionary approach, is willing to have the above condition amended to state that no work would be undertaken one hour after sunrise and one hour before sunset between March and October



(when bats are generally active) to ensure there is no adverse impacts upon the local bat population as a result of construction activities. Therefore, this should address Natural England's concerns in this regard,

Measures to ensure that lights will not impact areas used by bats.

Draft Condition 27 for the scheme states:

Prior to the occupation of any part of the development, full details of all new external lighting (including type of light appliance, the height and position of fitting, predicted illumination levels and light spillage) shall be submitted to and approved in writing by the Local Planning Authority. This submission should also cover new streetlighting if required. The scheme should seek to conform with the recommendations of the Institution of Lighting Professionals (ILP) "Guidance Notes for the Reduction of Obtrusive Light" (GN01:2011) but also minimise potential impacts to any bats using the trees and hedgerows by avoiding unnecessary artificial light spill through the use of directional light sources and shielding. The lighting approved shall be installed and maintained in accordance with the approved details.

Within 3 months of the completion of the development, the predicted illuminance levels shall be tested by a competent person to ensure that the illuminance levels agreed in the scheme are achieved. Where these levels have not been met, a report shall to demonstrate what measures have been taken to reduce the levels to those agreed within the application scheme shall be submitted to and approved in writing by the Local Planning Authority.

The adherence to the above condition will ensure that the development will avoid impacts upon bats from light pollution. As suggested by Natural England, area of light and dark can be represented spatially with the submission to discharge the Condition.

The protection of valuable habitat features through the implementation of secure buffers

It is believed that the protection of valuable habitat features will be achieved through the implementation of draft Condition 6, which states:

No development shall commence until a mitigation method statement has been submitted to and approved in writing by the Local Planning Authority to provide details of how those retained hedgerows are to be protected and enhanced. There must be a 5m buffer zone in place secured by fencing around the retained hedgerows during construction. The development shall thereafter proceed in accordance with the approved hedgerow protection and enhancement measures.

Natural England have also requested further information of the loss of foraging habitat. The trees that will require removal to facilitate development are shown on Beechdown Arboricultural Ltd.'s *Development Proposal Plan*, dated 13/05/2021 (attached). There are several small trees along the eastern boundary of the Site; significant severance of this tree line exists outside of the Site, both to the north and the south, so its current value as a commuting route is questionable. Furthermore, as previously mentioned, barbastelle bats, the qualifying feature of the SAC has not been recorded using this feature.

It is also worth noting that, as shown on Allen Pykes Landscape Masterplan (also attached), new tree planting is proposed along the eastern site boundary, while the existing hedgerow is more or less retained. Therefore, the long term impact upon this features, in terms of its value to commuting and bats, is negligible.

A Biodiversity Enhancement Plan is also required under Draft Condition 4, which will ensure that the appropriate habitat enhancement is delivered in perpetuity.



As the qualifying feature of the SAC have not been recorded within the Site, the potential for an adverse impact, as a result of the proposal, is considered to be nugatory. Habitat Regulations Assessment require a precautionary approach to be adopted in terms of potential impacts, and the decision maker should be certain beyond reasonable scientific doubt¹ that no adverse effects will arise on the integrity of the designation. However, what is required is 'reasonable certainty'² rather than 'absolute certainty' and that the risk should be 'real' (identifiable) rather than 'hypothetical' or 'fanciful'³.

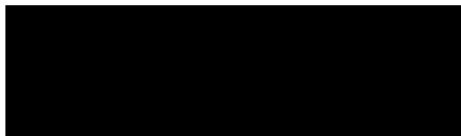
Regulation 70(2) of the Conservation of Habitats and Species Regulations 2017 (as amended) states:

Where the assessment provisions apply, the competent authority may, if it considers that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided if the planning permission were subject to conditions or limitations, grant planning permission, or, as the case may be, take action which results in planning permission being granted or deemed to be granted, subject to those conditions or limitations.

Hence, the implementation of the above Conditions will ensure, beyond reasonable scientific doubt, that any adverse impact upon the SAC, or its qualifying features, will be avoided. Hence, there appears to be no reason, on ecological grounds, that would prevent the grant of permission.

I hope you find this useful, but if you require any additional information, please do not hesitate to contact me.

Regards,



Derek Finnie CEnv MCIEEM
Director

Enc.

¹ T.C. Briels & others v Minister van Infrastructuur en Milieu C-521/12 [2014]

² WWF UK Ltd And RSPB V SoS for Scotland

³ Boggis V Natural England & Waveney District Council [2009] Ewca Civ 1061 and R (Morge) v Hampshire County Council (2011)



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Wings Nursery
Appendix 7 - development proposal plan

SCALE :	DATE :	
1 : 750 @ A3	13/05/2021	

Beechdown ref: B/0300/21
Wings Nursery - BS5837 tree survey/report - revised May 2021

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- Key:**
- Construction exclusion zone
 - Protective barrier
 - Category B removed
 - Category C removed
 - Category U removed





Legend

- Existing trees
- Proposed standard tree
- Proposed multistem tree
- Existing hedge
- Hedge
- Native planting
- Mixed planting
- Flowering meadow
- Amenity lawn
- Hedgerow and light shade meadow mix
- Swale meadow mix
- Flowering lawn
- Vehicular blacktop
- Pedestrian blacktop
- Parking courts
- Visitor parking
- Footpaths
- Timber bench
- Waste bin
- Close board fence

