

[REDACTED]

From: Simon Davis
Sent: 15 June 2022 12:50
To: Planning Scanning
Subject: FW: Arun DC Application AL/34/22/PL Land at Wings Nursery, Lidsey Road, West Sussex PO20 3SU (your ref 388825)
Attachments: AA AL3422PL.pdf

AL/34/22/PL

[REDACTED]

From: Simon Davis
Sent: 15 June 2022 12:49
To: [REDACTED]
Subject: Arun DC Application AL/34/22/PL Land at Wings Nursery, Lidsey Road, West Sussex PO20 3SU (your ref 388825)

Dear Sir/Madam,

Your consultation response on this application (ref 388825) stated *"Natural England is not able to fully assess the potential impacts of this proposal on statutory nature conservation sites or protected landscapes or, provide detailed advice on the application. If you consider there are significant risks to statutory nature conservation sites or protected landscapes, please set out the specific areas on which you require advice."*

Arun DC understand that we need to consider the need for Habitat Regulations Assessment for all developments within the 12km consultation zone of the Singleton and Cocking Tunnels Special Area of Conservation (SAC) located within the South Downs National Park. This application seeks to make an alteration to a construction hours of working condition that was imposed on ref AL/20/21/PL which itself was subject to Appropriate Assessment with the original condition being agreed by Natural England. We have therefore undertaken to provide a new Appropriate Assessment concerning the proposed changes to the condition and its impact on bat species associated with the SAC.

In accordance with the Conservation of Habitats & Species Regulations 2017 (as amended), I am writing to you to request your consultation advice on this Assessment. I would be grateful if you could provide a response within 10 working (by 30/06/22) or otherwise please indicate if you require a longer period. Please note that this application is going before our planning committee on 20/07/22.

Kind Regards

Simon J Davis MRTPI
Principal Planning Officer
Directorate of Place

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Habitats Regulations Assessment (HRA)

Screening and Appropriate Assessment Statement

Singleton & Cocking Tunnels SAC

Direct impacts, impacts to roosts, foraging habitat and flightlines

PLEASE NOTE: Undertaking the HRA process is the responsibility of the decision maker as the Competent Authority for the purpose of the Habitats Regulations, however, it is the responsibility of the Applicant to provide the Competent Authority with the information that they require for this purpose.

As part of its duty under the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations), Arun District Council has produced this document to provide screening, and where necessary appropriate assessment, of the development proposal below.

Details of the proposed development

Details of the proposed development	
Planning Application Number	AL/34/22/PL
Overview of the planning application	Variation of conditions imposed under AL/20/21/PL relating to conditions 2-plans condition (three bungalows changed to two storey houses, other elevation detail changes and highway drawings amended to reflect layout changes) and 5-hours of demolition/construction (to make it so that the additional bat working restrictions do not apply outside of bat hibernation times). Only the change to condition 5 relates to this Screening/Appropriate Assessment Statement.
Has information been submitted by the applicant which informs this HRA? Please list all relevant submitted documents	Yes: Copy of a letter from the applicant's ecologist dated 26/07/21 as submitted with AL/20/21/PL in response to Natural England's comments dated 20/07/21 in respect of the Councils initial Appropriate Assessment. This is on the Councils website erroneously labelled as "Natural England Comments" but listed as an original statement and dated 23/03/22.
Is the planning application directly connected with or necessary to the management of the designated site? If yes, please summarise details provided by the applicant.	No

Stage 1: Screening – the ‘Likely Significant Effects test’.

Screening under Regulation 63(1)(a) of the Habitats Regulations – Could there be likely significant effects, alone or in combination with other plans or projects? The assessment must exclude the consideration of mitigation measures following the ‘Sweetman II’¹ judgement.

Note that the Sussex Bat Protocol 6.5km and 12km zones have been specifically set in order to capture ‘in combination’ effects that would arise from a small number of developments delivered over a wide area. As such, provided these zones are used a separate explicit ‘in combination’ assessment may not be needed.

Screening Assessment

Bats are protected species and a key reason for designation (designated feature) of the Singleton and Cocking Tunnels international site in Sussex. In addition to the SAC containing critically important maternity roosting or hibernation sites, due to the highly mobile nature of bats, it is inevitable that the area of habitat crucial to the maintenance of their populations extends beyond the physical limits of the internationally designated site for which they are an interest feature. This is recognised through the Habitats Regulations Assessment (HRA) for the South Downs Local Plan (SDLP) and the emerging ‘Sussex Bat Special Areas of Conservation (SAC’s) – Planning and Landscape Scale Enhancement Protocol’. This habitat is integral to supporting bats for which the SAC is designated and is often referred to as ‘functionally linked’ or ‘supporting habitat’. Such functionally linked habitat includes foraging areas, supporting roost sites, and flight lines/commuting routes for dispersal, and connecting roosts and foraging areas.

The following information about the bat species is extracted from the HRA of the South Downs Local Plan (SDLP) and the published Conservation Objectives Supplementary Advice²:

Barbastelle bat *Barbastellus barbastellus*: Barbastelle bats are thought to generally forage along linear features in pastoral landscapes including deciduous woodland, wet meadows and waterbodies. Barbastelles appear to select cracks and crevices in wood for breeding, mostly in old or damaged trees, but cracks and crevices in the timbers of old buildings may also be used. Maternity colonies may move between suitable crevices within a small area, such as a piece of woodland or a complex of buildings. Caves and underground structures may be used for hibernation. The species is very sensitive to disturbance, together with the loss of roost-sites and food resources.

Bechstein’s bat *Myotis bechsteinii*: The species is closely associated with mature deciduous woodland and appears to select old woodpecker holes or rot holes in trees for breeding. It also occurs in coniferous woodland in some areas. Maternity colonies may move between suitable crevices within a small area, such as a piece of woodland. It is believed to hibernate in hollow trees and sometimes in underground localities. Foraging is typically in and around woodland.

The SDLP and its HRA take a precautionary approach and identify two zones, a 6.5km zone and a 12km zone.

- Within the 6.5km zone all impacts to bats should be considered. These include direct loss to the SAC itself and direct impacts on the SAC itself. It also includes loss or impacts on functionally linked habitat including roosts, greenfield sites, mature vegetation

¹ The Court of Justice of the European Union (CJEU) judgement in the case of ‘People over Wind and Peter Sweetman v Coillte Teoranta’ (Sweetman II) determined that mitigation (i.e., measures that are specifically introduced to avoid or reduce the harmful effects of a plan or project on European sites) should not be taken into account when forming a view on likely significant effects (i.e. at the screening stage). Mitigation should instead only be considered at the appropriate assessment stage. Appropriate Assessment is not a technical term: it simply means ‘an assessment that is appropriate’ for the plan or project in question’. As such the law purposely does not prescribe what it should consist of or how it should be presented.

² Natural England (2019) Conservation Objectives and Supplementary Advice for The Singleton & Cocking Tunnels SAC <http://publications.naturalengland.org.uk/publication/6518329883754496>

including woodland and hedgerows and riverine environments suitable for foraging areas and flight lines. In addition to direct loss, impacts may arise from disturbance, lighting, or sound/vibration for example during construction. No part of this zone affects the Arun District area.

- Within the 12km zone significant impacts or severance to flight lines should be considered. This includes physical severance of flight lines and severance via impacts such as disturbance which would effectively render it severed if no longer suitable for use by bats, for example, due to lighting impacts. Linear features connected to the wider landscape including mature vegetative features such as woodlands, hedgerows, riverine and wetland habitat should be considered.

(a) The development proposals are within the following zone as set out in Local Plan Policy SD10:

- **12km zone for the Singleton & Cocking Tunnels SAC** - designated for its hibernating populations of barbastelle bat and Bechstein's bats within the former railway tunnels.

(b) Within the 12km zone: Will there be potentially significant impacts or severance to flight lines of the relevant Sussex Bat SAC(s)? Yes

Commentary: *(describe impact)*

As per the Council's previous Appropriate Assessment submitted to Natural England reference application AL/20/21/PL on 13/08/21. This set out impacts in respect of:

- Construction disturbance.
- Habitat Alteration.
- Air Pollution (dust during construction).
- Potential for water pollution from attenuated/treated surface water drainage to existing ditches; and
- Light pollution (construction & completed development).

Screening Conclusion

(Delete answers yes or no as appropriate.)

(c) Could the development proposal lead to likely significant effects, alone or in combination with other plans or projects?

Yes

Stage 2: Appropriate Assessment

Stage 2: Appropriate Assessment – the ‘Integrity Test’

Appropriate Assessment under Regulation 63(1) - if there are any potential significant impacts, the applicant must provide evidence showing avoidance and/or mitigation measures to allow an Assessment to be made as to whether there could be ‘adverse effects on the integrity of the relevant European site(s), alone or in combination with other plans or projects. The Applicant must also provide details which demonstrate any long-term management, maintenance and funding of any solution.

Appropriate Assessment

The reasons for designation and the conservation objectives for **The Singleton & Cocking Tunnels SAC** are set out in the Appendix and are considered in the following assessment.

As reflected in Policy SD10 of the SDLP, proposals which may have a likely significant effect due to impacts on the SAC directly or its functionally linked habitat require surveys to support assessment of the issue to ensure that key features are retained, in addition to a suitable buffer to safeguard against disturbance. The scale of the buffer will need to be determined on a case-by-case basis informed by bat activity survey work and would account for the species involved and their sensitivity to disturbance/artificial lighting and the natural screening provided by existing surrounding vegetation. It would need to be devised in consultation with the SDNPA (in addition to Natural England, as required).

(a) Has sufficient survey and assessment work been undertaken and submitted to inform this Appropriate Assessment? Yes

(if yes, continue to questions (b) and (c). If no, continue to NE comments and then Appropriate Assessment conclusion sections below where it can be concluded that an adverse effect on integrity cannot be ruled out)

Commentary: *(please outline)*

Copy of a letter from the applicant’s ecologist dated 26/07/21 as submitted with AL/20/21/PL in response to Natural England’s comments dated 20/07/21 in respect of the Councils initial Appropriate Assessment. In addition, an application has been made to revise the approved Construction & Environmental Management Plan in respect of lighting.

(b) The following impact(s) are identified via the screening and subsequent survey, and are assessed below: *(here, please outline the potential impacts and the avoidance and mitigation measures, considering to what extent they address the impacts, considering the conservation objectives, stating how they will be secured, and citing relevant information to support your assessment plus any comment on its adequacy, and reference to any particular relevant requirements such as those in Neighbourhood Plans or their supporting HRA’s)*

(here, please outline the potential impacts and the avoidance and mitigation measures, considering to what extent they address the impacts, considering the conservation objectives, stating how they will be secured, and citing relevant information to support your assessment plus any comment on its adequacy, and reference to any particular relevant requirements such as those in Neighbourhood Plans or their supporting HRA’s)

The previous planning application ref AL/20/21/PL was approved on 28/02/22. This followed the submission to Natural England of a revised Appropriate Assessment (AA) on 13/08/21 and subsequent receipt of Natural England’s comments on 31/08/21 (your ref 364297) in which it was stated:

NO OBJECTION - SUBJECT TO APPROPRIATE MITIGATION BEING SECURED

We consider that without appropriate mitigation the application would:

- have an adverse effect on the integrity of Singleton and Cocking Tunnels Special Area of Conservation (SAC) <https://designatedsites.naturalengland.org.uk/>.*
- damage or destroy the interest features for which Singleton and Cocking Tunnels Site of Special Scientific Interest (SSSI) has been notified.*

In order to mitigate these adverse effects and make the development acceptable, the following mitigation measures are required / or the following mitigation options should be secured:

- the measures as detailed in the final Habitats Regulation Assessment (HRA).*

One of the measures referred to in the AA was a condition stating “No demolition or construction activities shall take place other than from 08:00 hours until 18:00 hours (Monday to Friday) and from 08:00 hours until 13:00 hours (Saturday) with no noisy work (defined as not involving any machinery/plant) on Sunday or Bank/Public Holidays. In addition, there shall be no external working an hour before, during and an hour after sunset and sunrise even if those times fall within the above time periods.”

Natural England set out in their response of 31/08/21 that “*Regarding disturbance which could be caused by the construction of the proposal we endorse the time restrictions on activity between 8am and 8pm. We also agree that restricting activity an hour either side of sunrise and sunset will be effective at reducing disturbance. We advise these measures are secured by an appropriate planning condition.*”

Subsequent to this, the applicant pointed out that the supporting information as provided during the application which informed the revision of the AA recommended that the condition actually be worded as follows (with the difference in the wording underlined):

No demolition/construction activities shall take place other than from 08:00 hours until 18:00 hours (Monday to Friday) and from 08:00 hours until 13:00 hours (Saturday) with no noisy work (defined as not involving any machinery/plant) on Sunday or Bank/Public Holidays. In addition, there shall be no external working an hour before, during and an hour after sunset and sunrise between March and October (when bats are generally active) even if those times fall within the above time periods.

We sought further advice from Natural England on this aspect and received a response 20/01/21 to state that “*Natural England advise that the current condition is sufficiently precautionary to account for recent mild winters and associated continued bat activity. Furthermore, any changes will need to be accompanied by an updated HRA.*”

The applicant was therefore asked to submit a variation of condition application to seek approval for the proposed change in the wording and this is what is now before us.

On 26/05/22, a meeting was held between ADC’s consultant ecologist (Place Services), the ADC case officer and the applicant’s ecologist in which it was agreed that the key retained bat habitat on the site was the northern part of the western boundary hedgerow. On this basis, it was agreed that the applicant would amend their approved Construction & Environmental Management Plan (CEMP) to specify that all lighting will be directed away from all of the boundaries and that lighting around those plots closest to the important part of the western boundary will be subject to additional controls (these being plots 42-45 & 28-29). This aims to avoid impacts to Barbastelle bats which have been recorded in the vicinity of the development site (SxBRC dataset accessed under licence on 25/5/22). These bats could therefore be flying during any periods of mild winter weather and using the western boundary hedgerow to/from the Singleton & Cocking Tunnels SAC but will be unaffected by lighting during the construction period.

In response, the applicant has recently (validated 01/06/22) submitted a new application to re-discharge condition 14 of AL/20/21/PL and has revised the CEMP to state:

All external lighting on the construction site shall be directional LED lighting which shall be directed away from retained hedgerows. Lighting around Plots 42-45 & 28-29 shall be operational during sunrise/sunset hours only to minimise disturbance to neighbouring hedgerow.

This application (ref AL/77/22/DOC) is pending but subject to agreement from our ecologist (which is expected as the change is in response to the agreed position), the condition will be agreed, and the revised CEMP will take effect.

It should also be noted that a condition requiring details of lighting concerned with the completed housing development has not been discharged yet so the Council retains control over this aspect of lighting and will similarly ensure (in association with the advice of our ecologists) that lighting is directed away from the boundaries etc.

On this basis, it is proposed to agree to vary the hours of working condition to remove the additional hours restriction other than in respect of the plots closest to the important hedgerow.

“No demolition/construction activities shall take place other than from 08:00 hours until 18:00 hours (Monday to Friday) and from 08:00 hours until 13:00 hours (Saturday) with no noisy work (defined as not involving any machinery/plant) on Sunday or Bank/Public Holidays. In addition, there shall be no external working in respect of plots 28/29 & 42-45 in the north-western corner only, an hour before, during and an hour after sunset and sunrise even if those times fall within the above time periods”

(c) Have the impacts identified been sufficiently addressed by avoidance and mitigation measures outlined? Yes

Natural England comments submitted on the development proposals:

(provide a brief summary of relevant comments provided from Natural England, including the date received. These comments should be addressed during the course of the appropriate assessment)

Natural England responded on 12/04/22 (ref 388825) to state:

“Natural England is not able to fully assess the potential impacts of this proposal on statutory nature conservation sites or protected landscapes or, provide detailed advice on the application. If you consider there are significant risks to statutory nature conservation sites or protected landscapes, please set out the specific areas on which you require advice. The lack of detailed advice from Natural England does not imply that there are no impacts on the natural environment. It is for the local authority to determine whether or not the proposal is consistent with national and local environmental policies. Other bodies and individuals may provide information and advice on the environmental value of this site and the impacts of the proposal on the natural environment to assist the decision-making process.”

Appropriate Assessment Conclusion

(d) Will there be adverse effects on the integrity of the The Singleton & Cocking Tunnels SAC, alone or in combination with other plans or projects, arising from this development proposal?

No – There will not be adverse effects on the integrity of **The Singleton & Cocking Tunnels SAC** due to provision of suitable avoidance and mitigation measures outlined above and secured by condition

As per the above, the proposed CEMP has been revised to specify additional controls relating to lighting on the construction site.

Conclusion

Overall conclusion

Based on the assessment above, it can be concluded that **there are no likely significant effects on / no adverse effect on integrity of the Singleton & Cocking Tunnels SAC.**

Appendix

Summary of Relevant European Site

Singleton & Cocking Tunnels Special Area of Conservation	
Reasons for designation	Habitats Directive Annex II Species: – Hibernating barbastelle bat <i>Barbastella barbastellus</i> – Hibernating Bechstein's bat <i>Myotis bechsteinii</i>
Sensitivities, vulnerabilities and pressures	– Loss of connectivity of landscape features to allow foraging and commuting within and to supporting habitat – Disturbance – Impacts on humidity of barbastelle roosts
Conservation Objectives	Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring: – The extent and distribution of the habitats of qualifying species – The structure and function of the habitats of qualifying species – The supporting processes on which the habitats of qualifying species rely – The populations of qualifying species, and, – The distribution of qualifying species within the site.