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DE11 0AH

For the attention of James Norton

Your Ref: DMPA/2022/1206

Our ref: DWTSOU940

05/01/2023

Dear James

Proposal: Conversion of agricultural buildings to create four dwellings, new garaging and demolition of redundant buildings

Location: Newton Lane Farm, Newton Lane, Newton Solney, Burton On Trent, DE15 0RU

Application: DMPA/2022/1206

With reference to the above application, I am responding as the Biodiversity Planning Officer responsible for work relating to the Service Level Agreement, which the South Derbyshire District Council and the Trust have signed. The following comments are aimed at providing accurate and up to date information on the nature conservation issues associated with the proposed development.



Response

The application involves the redevelopment of the existing buildings and we have reviewed the Ecological Appraisal Report (FPCR Environment & Design Ltd, August 2022) detailing results of Ecological surveys including a Potential Bat Roost Assessment and nocturnal bat surveys.

Barn Owl

The Ecological Appraisal Report identifies the use of building B5 by a roosting barn owl although no evidence of breeding was found at the time of survey. Therefore, as recommended in section 5.27 of the report, a pre-commencement check of this building should be completed immediately before any works start to determine whether any nesting barn owls are present.

If any active nests, nests being built or dependent young are found then works should be postponed and no disturbance allowed to the building until the young are no longer dependent on the adult birds. This would be a statutory requirement under Schedule 1 of the Wildlife and Countryside Act (1981 as amended).

Bats

The report provides details of a preliminary bat assessment of the buildings undertaken in May 2022. This assessment classed some buildings as having negligible, low or moderate potential to support roosting bats and in accordance with current best practice guidance, bat activity surveys were subsequently undertaken during summer 2022 by FPCR Ecologists.

A single common pipistrelle was noted entering building B5 and a single common pipistrelle was recorded re-entering building B3 during these surveys. Therefore, the surveys confirmed the presence of two separate day roosts for common pipistrelle bats each with a peak count of 1 individual.

The reports rightly state that the proposed works will have to be carried out under a Natural England Bat Mitigation Class Licence (BMCL) in order to avoid committing an offence. It may be possible to apply for a Bat Mitigation Low Impact Class Licence (BMLICL) given the low conservation status of the roosts used by a small number of a common species. However, advice on this should be taken from a suitably qualified Bat Ecologist registered to use this scheme.

On the basis of the submitted information we advise that the proposed development will affect bats through disturbance of a European Protected Species and the destruction of a resting

place. All species of bats are European Protected Species and a licence is required in order to carry out any works that involve disturbance to the animals or destruction of their resting place.

Details of appropriate mitigation and enhancement measures are provided in the report produced by FPCR Environment & Design Ltd dated August 2022.

We would therefore recommend that a condition to secure the following is attached to any consent:

“The development shall be carried out in accordance with the mitigation and enhancement measures outlined in the Mitigation section, Section 5.21, of the report prepared by FPCR Environment & Design dated August 2022. The measures shall include the need to apply for a Natural England Bat Mitigation Licence. All works shall then proceed in accordance with the measures and the conditions of the Natural England licence, a copy of which shall be submitted to the Local Planning Authority once issued.”

As the works will need to be undertaken under a Natural England licence to derogate from the offence of destruction of a bat roost, we advise the Council that in reaching a decision the Council should demonstrate how the three tests set out at Regulation 55 of the Conservation of Habitats and Species Regulations 2019 have been considered, and state the evidence for conclusions drawn on each test as to whether the test can be met. The three tests set out within Regulation 55 are as follows:

- (i) The action will be undertaken for the purpose 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(2)(e))***
- (ii) That there is no satisfactory alternative (Regulation 55(9)(a))***
- (iii) That the action will not be detrimental to the maintenance of the population of the species concerned at favourable conservation status in their natural range (Regulation 55(9)(b))***

Whilst we are unable to advise on the first two “non-ecology” tests, we would advise that on the basis of the proposed mitigation and enhancement measures recommended in the report prepared by FPCR Environment & Design Ltd dated August 2022 it is likely that the favourable conservation status of the local bat population will be maintained and, as such, test (iii) will be met.

Breeding Birds

Evidence of breeding birds were found within several of the buildings and other buildings within the site may also have potential to support nesting birds. The active nests of all wild birds are protected under the Wildlife & Countryside Act 1981 (as amended). An active nest is one being built, containing eggs or chicks, or on which fledged chicks are still dependent. Therefore, no demolition work should be undertaken between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check for active birds' nests immediately before the work is commenced. If any active nests are discovered then the nest should be left undisturbed until the birds have fledged with an appropriate buffer surrounding the nest. This also relates to the removal of any trees or existing hedgerows within the site should this be required.

Biodiversity Enhancement Plan

Prior to building works commencing above foundation level, a Biodiversity Enhancement Plan shall be submitted to and approved in writing by the Local Planning Authority. Approved measures shall be implemented in full and maintained thereafter. The Plan shall clearly show positions, specifications and numbers of features, which will include (but are not limited to) the following:

- a permanent roosting/nesting space for barn owls provided within at least one of the developed buildings or alternatively a barn owl nest box erected on a suitable mature tree or mounted on a pole within an adjacent field and close to suitable foraging habitat.
- bird nest boxes.
- integrated bat boxes.
- insect bricks
- fencing gaps 130 mm x 130 mm to maintain connectivity for hedgehogs.
- summary of ecologically beneficial landscaping (full details to be provided in Landscape Plans).

Photographs of these features in situ shall be submitted to the LPA to discharge this condition and the features shall be maintained in perpetuity.

Lighting

Any lighting scheme should avoid introduced light in the vicinity of the new bat and bird boxes and the flight paths to these features which will be provided as biodiversity enhancement.

Prior to the installation of lighting fixtures, a detailed lighting strategy shall be submitted to and approved in writing by the LPA to safeguard bats and other nocturnal wildlife. This should

provide details of the chosen luminaires, their locations, and any mitigating features such as dimmers, PIR sensors and timers. Guidelines can be found in Guidance Note 08/18 - Bats and Artificial Lighting in the UK (BCT and ILP, 2018). Such approved measures will be implemented in full.

It is hoped that the information provided is helpful to the Council. If you require any further information or wish to discuss any of the comments made, please do not hesitate to contact me.

Yours sincerely,

J. Wheeldon

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Endnote:

Please see our planning pages <https://www.derbyshirewildlifetrust.org.uk/planning> for ecological advice on submitting a planning application, finding an ecological consultant and information on mitigation and enhancement.