

# HERTFORDSHIRE BIOLOGICAL RECORDS CENTRE

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PLANNING  
DEPARTMENT

17 MAR 2011

RECEIVED

Mrs S. Smith  
Planning Officer  
Welwyn Hatfield Borough Council  
The Campus Welwyn Garden City  
AL8 6AE

Pl. ask for     :- Graham Goodall  
Our Ref        :-  
Your Ref       :- N6/2010/3120/DC3  
Telephone      :- 01992 556155

Date            :- 16/03/2011

Dear Mrs Smith

**Planning application: N6/2010/3120/DC3; Splashlands, Stanborough Road, WGC. Redevelopment of site to provide a wet play area, adventure play areas, an educational play area, high ropes attraction, changing huts, education room, café and toilet facilities. Alterations to Stanborough Road and car park on site.**

**Extended Phase 1 Habitat Survey Report. Middlemarch Environmental Ltd. October 2010.**

A site survey was conducted on 16<sup>th</sup> September 2010.

The report states:

#### Habitats:

*"The building, riparian habitat, scattered trees, scrub, species poor intact hedgerow and woodland are all classed as important habitats due to their potential to support one or more of the following protected species; bats, birds, reptiles, badger and water vole."*

#### Bats:

*"The building and trees had features present which may be of value to roosting bats including cracks, crevices, split limbs and cavities."*

*"The site offers suitable habitat to support bats including potential roosting locations within the building located to the centre of the site which has features including holes in the weather boarding. The trees within the site offer suitable features for roosting bats including woodpecker holes, cavities, peeling bark and split limbs."*

#### Birds:

*"..... mature trees and the scrub provides suitable nesting and foraging habitat."*

#### Badger:

*"No evidence of badger activity including setts, latrines, or snuffle holes was recorded during the field visit."*

#### Water Vole:

*"The site offers suitable habitat to support water vole due to the presence of the River Lea and its associated riparian habitat. Burrows were recorded along the banks of the river..... which may be those of water vole, as such it is considered that the proposed development may negatively impact upon water voles." ."*

Reptiles:

*"..... the riparian banks of the river and the scrub provide suitable habitat to support reptiles and as such it is considered that the proposed development may negatively impact upon reptiles."*

Recommendations.

The report goes on to recommend that further surveys should be conducted for:

- Bats
- Badger
- Water vole
- Reptiles.

#### **HBRC COMMENTS AND ADVICE.**

Bats, badger, breeding birds, water vole and reptiles are all protected species; bats are European Protected Species.

The Extended Phase 1 Habitat survey has identified that the habitats on and adjacent to the site are important due to their potential to support one or more protected species; bats, birds, reptiles, badger and water vole.

The report recommended that further surveys should be conducted for:

- Bats
- Badger
- Water vole
- Reptiles.

#### **It would appear that these surveys have not been conducted.**

Local Planning Authorities (LPA) have a legal duty to have due regard to protected species via:

- PPS9
- NERC Act 2006
- Conservation of Habitats and Species Regulations 2010.

#### **Protected species, the Law and Planning Process:**

Bats, badger, breeding birds, water vole and reptiles are all protected species.

Bats are protected under both European and national legislation and are a material consideration in the determination of a planning application, that if implemented would be likely to result in harm to the species.

The government circular accompanying PPS 9 (paragraphs 98-99) 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".*

Being European Protected Species (EPS), bats are also covered by case-law, as of June 2009 (known as 'the Woolley Judgment')<sup>1</sup>. This judgment clarified that in granting planning permission the LPA has a statutory duty to apply the three tests contained in the species protection provision of the Habitat Regulations.

<sup>1</sup> R (on the application of Simon Woolley) v East Cheshire Borough Council 2009 EWHC1227. Further information on the Woolley judgment is available via <http://www.planningofficers.org.uk/media/www/documents/LPAProtectedSpeciesDuty.pdf>

In order to discharge this duty the LPA will need to ask the applicant for appropriate information (via an appropriate bat emergence survey report) and apply the three stage test.

The three tests are as follows:

- The proposals must be for imperative reasons of overriding public interest (OPI) or for public health and safety.
- There must be no satisfactory alternative.
- The favourable conservation status of the species in their natural range must be maintained.

The LPA will need to apply these tests prior to making a decision on the planning application. Otherwise there is a risk that any planning permission granted could be legally challenged by a third party and subsequently quashed.

It is also of note that in the Woolley judgment, the court held that this duty cannot be discharged by the LPA imposing a condition on the consent that requires the developer to obtain a licence from Natural England<sup>2</sup>.

**In conclusion, given the lack of information to enable a judgement to be made on the presence of protected species on the site, and (if present) any necessary mitigation required to be incorporated into the proposals, we advise that this application cannot be approved.**

**HBRC recommend that the application is withdrawn (or refused) and that it is not re-submitted until appropriate species surveys have been completed and written reports (with mitigation if required) produced for the LPA to consider in line with their biodiversity duty.**

Yours sincerely,

Graham Goodall, CEnv. MIEEM.  
Senior Ecologist

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THREE RIVERS DISTRICT COUNCIL, WELWYN HATFIELD COUNCIL, NATURAL ENGLAND and ENVIRONMENT AGENCY

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<sup>2</sup> Natural England (2009). *European Protected Species and the Planning Process*. Accessible via [http://www.naturalengland.org.uk/Images/WoolleyVsCheshireEastBC\\_tcm6-12832.pdf](http://www.naturalengland.org.uk/Images/WoolleyVsCheshireEastBC_tcm6-12832.pdf)