

Planning Committee

Update Sheet

5th March 2015

The information set out in this Update Sheet includes details relating to public speaking and any change in circumstances and/or additional information received after the agenda was published.

Item No	Ref No	Address	Recommendation
01	14/01616/FUL	Sparsholt College, Westley Lane, Sparsholt, Winchester	REFUSE

Agenda Page: 3

Officer Presenting: Jill Lee

Public Speaking

Objector: Christopher Napier or John Little

Parish Council representative: Sue Wood (Chair of Sparsholt PC) and Carole Phillip (Crawley Parish)

Ward Councillor: Cllr Horrall & Cllr Weir

Supporter: Hannah Morrall

Update

1 Officers have been copied in to a letter which has been circulated to Members, the letter is from the principal of Sparsholt College supporting the proposed wind turbine.

2 A legal opinion has been submitted by the applicant in support of their application in relation to the ecology objection that has been raised. The opinion quotes case law and aims to undermine the Councils reason for refusal on lack of survey work in respect of protected species namely dormice and bats.

This opinion has been assessed by Winchester City Councils ecologist who has confirmed the following;

Many thanks for consulting me on the legal opinion provided by letter from Freeths (24th February 2015) in support of planning application Ref: 14/01616/FUL at Sparsholt College, Hampshire.

The opinion from Freeths remarks firstly on the "Council's legal duty to EPS" before continuing to consider "Bats in relation to this Application". In respect of the first emphasis of the opinion and where this is applicable, I do not dispute that the *Morge* case demonstrates that the planning authority should have regard to the Habitat Regulations in so far that planning permission should be granted (other concerns notwithstanding) unless

- a) the development is likely to result in a breach of the EU Directive which is transposed into UK law by the Conservation of Habitats and Species Regulations 2010 (commonly referred to as the Habitats Regulations), and
- b) is unlikely to be granted an EPS licence from Natural England to allow the development to proceed under a derogation from the law.

Crucially, the emphasis the legal opinion has made from *Morge* and other judgements is the Council's duty in respect of determining "*whether a derogation from that provision should be permitted and a licence granted*" rather than the Council's duty to consider whether an offence/breach of the Directive is or is not likely.

If the Council cannot first determine that an offence is or is not likely, the Council cannot consider whether a licence is unlikely to be granted and therefore the emphasis made by the legal opinion is not yet applicable to the current situation. The fact that insufficient survey information has been provided means that the Applicant (and the Council) is not in a position to determine the status of protected species on site which in turn prevents an understanding of likely impacts and whether or not an offence is likely.

In respect of the Council's duty to have consideration as to whether an offence is or is not likely in this case the legal opinion states: "*From the information already provided, it is absolutely clear that an offence against bats is unlikely to occur in this case...*".

It is here that the legal opinion has failed to consider the robustness of the "*information already provided*". As evidence, the legal opinion repeats the messages of the ecological information submission which supports this application including: "*There are no records of any high risk species in the area and these species were not recorded on the site during surveys*", "*The survey data supports this showing very limited use of arable land by all bat species present*" and "*there is minimal opportunity for bat roosts on site*". As emphasised in all of my comments on the application documents, it is considered that the level of survey effort employed by the applicant's ecologist is insufficient to allow a well informed assessment of the impacts to bats associated with the proposal. In other words, the Council is not able to consider whether an offence is or is not likely on the basis of the currently provided information.

How the legal opinion has ascertained that the Council should be absolutely clear that "*an offence is unlikely*" on the basis of the unsuitable survey effort employed by the Applicant's ecologist to the point that it can conclude that mitigation measures (i.e. curtailment of the turbine) are "*wholly unnecessary*" is surprising.

The legal opinion continues that "*any killing or injury or disturbance of bats through interaction with the single turbine could not trigger the offence of "deliberate killing" or "deliberate injury" or "deliberate disturbance" because the mitigation measures described have the effect of ensuring that any injury or death or disturbance could not be regarded as "deliberate"; and in any event the "deliberate disturbance" offence is (following the supreme court in Morge) directed at deliberate disturbance of bat species, not individual bats.*" It is worth noting that the *Morge* judgement was made with the benefit of a sound evidence base (i.e. full surveys, in accordance with guidance, had been completed), whereas here the baseline data is lacking.

It is my opinion that the mitigation measures described do not have the effect of ensuring that any death or injury or disturbance could not be regarded as deliberate. If the Council was able to consider whether an offence was likely (which for the reasons described above it is not), the mitigation measures proposed are not supported by an appropriate level of survey effort. In order to successfully address the impacts of a development and ensure a “deliberate” offence is avoided, the status of bats on site must first be assessed by suitable survey effort (in accordance with Natural England Standing Advice). If the status of bats on site has not been assessed by appropriate survey effort the impacts of the development on bats cannot be determined and so the aims of any mitigation are undermined. Mitigation should be based on knowledge of impacts.

As previously described in my comments on the Application, the surveys undertaken at the site do not accord with standards for surveys set by Natural England’s Standing Advice. Therefore the application does not benefit from the support that would be achieved by according with survey standards.

Following the legal opinion provided on 24th February 2015 I would maintain my conclusion that the Council currently has insufficient information to consider the extent that bats may be impacted by the development.

Unfortunately it is not appropriate to defer bat surveys as a condition of any planning permission – Circular 06/2005 identifies that full information on protected species must be available before a decision is made, and this is supported by Natural England’s Standing Advice on protected species. As discussed, planning authorities are required to engage with the Habitats Regulations, and without the right level of information (survey, impact assessment and appropriate, proportional avoidance, mitigation and compensation measures), this engagement is not possible.

Dormice

I understand that the original access plans provided by the applicant are to be considered at committee, not the two alternative options which have been discussed in the legal opinion. Therefore, my concerns raised regarding the original access route are still relevant.

Item No	Ref No	Address	Recommendation
02	14/01947/FUL	6 Kitnocks Farm Cottage, Outlands Lane, Curdridge, Southampton	PERMIT
Agenda Page: 27			
Officer Presenting: Simon Avery			
<u>Public Speaking</u>			
Objector: Rozie Haines (Representing Christopher Danner)			
Parish Council representative:			
Ward Councillor:			
Supporter: Ian Donohue			
 <u>Update</u>			
Condition 14 contains an error in that it refers to car ports being provided. This reference needs to be deleted and the condition should read as follows: <i>The parking areas shall be provided in accordance with the approved plans before the dwellings are first occupied and thereafter permanently retained and used only for the purpose of accommodating private motor vehicles or other storage purposes incidental to the use of the dwelling houses as residences.</i>			

Item No	Ref No	Address	Recommendation
03	14/02772/FUL	Highgrove House, St Thomas Street, Winchester	PERMIT
Agenda Page: 38			
Officer Presenting: Michelle Thomson			
<u>Public Speaking</u>			
Objector: Michael Lawrence			
Parish Council representative:			
Ward Councillor: Cllr Tait			
Supporter:			
 <u>Update :</u>			
None			

Item No	Ref No	Address	Recommendation
04	14/02773/LIS	Highgrove House, St Thomas Street, Winchester	PERMIT

Agenda Page: 49

Officer Presenting: Michelle Thomson

Public Speaking

Objector: Michael Lawrence

Parish Council representative:

Ward Councillor: Cllr Tait

Supporter:

Update:

None

Item No	Ref No	Address	Recommendation
05	14/02579/FUL	Lansdowne Court, Lansdowne Avenue, Winchester	PERMIT

Agenda Page: 58

Officer Presenting: Simon Avery

Public Speaking

Objector: James Treseder-Griffin or Patricia Treseder-Griffin and Alison Lilystone

Parish Council representative:

Ward Councillor: Cllr Tait

Supporter: Jason Murphy (Agent)

Update

None

Item No	Ref No	Address	Recommendation
06	14/02677/FUL	Proposed Cinema Site, Whiteley Way, Whiteley	PERMIT

Agenda Page: 72

Officer Presenting: David Rothery

Public Speaking

Objector: Malcolm Butler

Parish Council representative:

Ward Councillor:

Supporter: Adrian Barker (Agent)

Update

Confirmation that conditions 2, 6, 9 12 and 22 on the original planning permission 13/00157/FUL for the cinema development have been discharged.

Condition 2 – construction materials - 31 March 2014

Condition 6 – public realm master plan - 31 March 2014

Condition 9 – BREEAM pre-assessment - 3 April 2014

Condition 12 – Construction management plan - 25 March 2014

Condition 22 – acoustic fencing - 9 June 2014

Item No	Ref No	Address	Recommendation
07	14/02816/TPO	Woodland Adjacent to Acorn House, Thompsons Lane, Denmead	PERMIT

Agenda Page: 91

Officer Presenting: Thomas Gregory

Public Speaking

Objector: Roger Bowen

Parish Council representative: Cllr Neil Lander-Brinkley

Ward Councillor:

Supporter:

Update

The applicant has written in with an update to Councillors to explain why he wishes to clear the existing access. This letter will be distributed separately via email.

PDC 2120

Item No	Ref No	Address	
PDC 1020	TPO 2128	Land off Bunkers Hill, Denmead	
Officer Presenting: Thomas Gregory			
<u>Public Speaking</u>			
Objector:			
Parish Council representative: Cllr Neil Lander-Brinkley			
Ward Councillor:			
Supporter:			
 <u>Update</u>			
None			

End of Updates