Appeal number: APP/W1715/W/16/3150918
Application number: O/15/77009
Site Address: Land North of Boyatt Lane, Eastleigh, SO50 4LJ
Proposal: Outline application for construction of 2no 3 bed dwellings with associated carports and access (with appearance and landscaping reserved)

1.0 There were a number of concerns regarding the protection of the River Itchen SAC from in-combination impacts due to water quality within the construction and operational phase and the lack of protected species information on which to assess whether the three derogation tests can be satisfied.

1.1 **Protection of the River Itchen Special Area of Conservation**

1.2 The Conservation of Habitats and Species Regulations 2010 (As amended) transmutes the protection afforded to the Natura 2000 and Ramsar network within the E.C Habitats and Birds Directives into British law. Regulation 61 states that:

(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—
(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
(b) is not directly connected with or necessary to the management of that site,
must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.

(2) A person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable them to determine whether an appropriate assessment is required.

(6) In considering whether a plan or project will adversely affect the integrity of the site, the authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose that the consent, permission or other authorisation should be given.

1.3 The River Itchen SAC conservation objectives are:

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 qualifying natural habitats and habitats of qualifying species*
- *The structure and function (including typical species) of qualifying natural habitats*
- *The structure and function of the habitats of qualifying species*
- *The supporting processes on which qualifying natural habitats and the habitats of qualifying species rely*
- *The populations of qualifying species, and,*
- *The distribution of qualifying species within the site.*

1.4 The site is 850m from River Itchen SAC and is hydrologically connected to the SAC via a tributary of Monks Brook which runs through Pitmore Gully Copse and Lincolns Copse SINC, before entering the Itchen.

1.5 The strategic Habitats Regulations Assessment, prepared to support the Draft Local Plan, identified in combination impacts on the Itchen SAC from a number of developments draining into the River Itchen catchment. Due to the likely in combination impacts the strategic HRA recommended that any application likely to discharge surface water into the Itchen or a tributary should provide supporting evidence regarding natural hydrology and possible pollutants and devise a Construction Environmental Management Plan to ensure no pollution of the water course during the construction phases and a resilient Sustainable Urban Drainage System, mirroring natural flows, which ensures the water that leaves the site is of a high quality and flows remain stable.

1.6 As there are existing concerns regarding water quality and reduction in flows within the Itchen and flora and fauna species for which the SAC is designated are highly dependent on the quality of the water environment, interim criteria were required as soon as possible to ensure no significant impact from developments given permission before the Local Plan was adopted. Eastleigh Borough Council and Natural England worked on criteria which could be applied within individual application process to ensure surface water quality and flow from individual developments could be conserved. These safeguards included:

- Hydrological investigations of all developments to ascertain the natural water flows across the site.
- Contamination investigations to ensure no contaminants will be released into the Itchen Catchment.
- Botanical survey to Identify Invasive Non Native Species (INNS) and ensure no spread into the River system.
- A Construction Environment Management Plan (CEMP) which details safeguards to ensure surface water released from site within the construction process had a high water quality and flows were not impacted.
- A Sustainable Urban Drainage System (SuDS) which contains three naturalised forms of filtration to ensure water quality and flows are preserved within the operational phase

1.7 **Preservation of Water Quality and Water Flow within the construction Phase**

1.8 On submission O/15/77009 Land North of Boyatt Lane contained no details regarding safeguards to be put in place to alleviate risks to water quality within the construction process. It was recommended that the condition below was attached to any permission granted to ensure construction impacts could be dealt with in the detailed stages I am still happy with this condition.

> Before any work commences on site a Construction Environment Management Plan will be submitted to Eastleigh borough council incorporating safeguards to preserve the water quality and flows leaving the site.

Reason: To ensure no impact on the River Itchen SAC or its tributaries due to contamination and changes in flow.

1.9 Preservation of Water Quality and Water Flow within the operational phase

1.10 To ensure no impacts within the operational phase Eastleigh Borough Council require hydrological and contamination surveys to be completed at the outline stage to inform the Habitats Regulations Assessment (HRA). We also request that an indicative SuDS strategy is submitted detailing the methods of filtration and the space required. This is to ensure that naturalised SuDS can be delivered on site whilst still accommodating the development proposed.

1.11 The application provided little information regarding the hydrology of the site or surface flows. Permeable pavement and soakaways were proposed for drainage which stated the surface runoff would be reduced to zero. The system did not provide the required three stages of filtration and, due to reduction of flows the development will limit flows into the tributary and the Itchen. As there are already concerns that the Itchen is water deprived any drainage strategy for this site needs to ensure both water quality and flows are preserved.

1.12 I advised that a hydrological survey was undertaken on site and a drainage strategy devised that secures the present water flows into the stream and ensures water quality. Until such time as a full hydrology assessment and at least outline drainage strategy had been submitted I placed an objection on this development.

1.13 I am pleased to note that within the additional information supporting the appeal there is confirmation that runoff will meet Greenfield rates rather than zero rates and flows will be conserved into the SAC. However I am still concerned that the proposed SuDS does not meet the criteria agreed with Natural England for naturalised SuDS with three forms of filtration. I would see the permeable paving and oil separation layer as one form with soakaways forming a second filtration. The SuDS is very engineered and there is a high risk that the filtration will deteriorate if maintenance is provided. As the maintenance is likely to be the responsibility of the residents Eastleigh Borough Council has no guarantee that these measures will effectively limit impact on the River Itchen SAC in the long term.

1.14 **Foul Sewerage disposal**

1.15 Within my original response I was concerned that the proposed discharge into the existing r foul run at Boyatt Crescent/Boyatt Lane had not been agreed by Southern Water. Due to the strategic concerns in regards to the capacity of the PUSH area to accommodate the sewerage within the PUSH area I would value an indication as to Southern Waters view about capacity. Providing Southern water is happy with the proposals foul disposal can be excluded as an area of disagreement.

1.16 **European Protected Species**

1.17 Where developments affect European protected species (EPS), permission can be granted unless the development is likely to result in a breach of the EU Directive underpinning the

Habitats Regulations and is unlikely to be granted an EPS licence from Natural England to allow the development to proceed under derogation from the law.

1.18 A European Protected Species licence can only be granted if the development proposal is able to meet three tests laid out in the Conservation of Habitats and Species Regulations 2010 (as amended):

- *the consented operation must be for '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 53(2)(e))*
- *there must be 'no satisfactory alternative' (Regulation 53(9)(a)); and*
- *the action authorised 'will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range' (Regulation 53(9)(b)).*

1.19 In order to assess the development against the third test, sufficient information must be available about the presence/absence of the species and nature of all roosts or supporting habitat to be impacted (based on sufficient survey effort), assessment of those impacts, and sufficient details to show how killing / injury of European protected species will be avoided and how the loss or disturbance to bat roosts or supporting habitat will be compensated in the developed site.

1.20 **Dormice**

1.21 This site is situated between two ancient woodland blocks with the hedgerow being the only connection between the two woodlands. The ability for the two blocks of woodland to support dormouse has not been disputed within application process, however the appellant has disputed the need for a detailed survey stating that nut and nest searches of the hedgerow only are required. We as a Local Authority have a duty to ensure that the three derogation tests are fulfilled. Of particular relevance to this development is the third test *the action authorised 'will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range' (Regulation 53(9)(b)).* Without a thorough survey we are unable to assess whether the site is used as a route between woodland blocks or whether severance of the hedgerow habitat proposed within the application will cause the dormouse population to become isolated. I note that the site ecologist cites the Natural England standing advice that:-

> *'You can limit surveys to visual searches for nests and opened nuts if the work only involves losing a small amount of habitat, for example:*
>
> *a. gaps in hedgerows*
> *b. removing a small amount of bramble scrub'*

1.22 However here the impacts are not only limited to a gap in the hedge. The issue is whether the access work proposed for the development will disconnect habitats limiting the movement of the dormice between habitats and the feeding, nesting and dispersal

resources available. Establishing the presence or not of dormice will also enable the application to take note of and provide mitigation for increases in disturbance and light on any dormouse present.

1.23 I note within the submission it is stated that the survey proves that dormice are not a material consideration in respect of these proposals as nests have not been recorded. This statement cannot be proved without a full survey of woodland adjacent to the development. Dormice, if present, are likely to use the hedgerow as a connecting route with nest being located in the more species rich ancient woodland. Therefore it would not be surprising that no nesting signs were recorded. The issue here is habitat severance not removal of nesting or foraging habitat. Due to the length of from refusal to appeal I was hopeful that thorough surveys would be submitted. However despite having ample time to undertake a full survey the appellants have maintained their original position.

1.24 **Bats**

1.25 Due to our wish to meet best practice standards, Eastleigh Borough Council requires bat surveys conforming to best practice Bat Survey Guidelines 2016 produced by the Bat Conservation Trust. This is particularly pertinent within Eastleigh Borough as a strategic survey has identified rare bats within the borough with barbastelle foraging recorded within a number of sites. Due to the fact that foraging habitat is not specifically protected I did agree to the survey being conditioned as below.

> At the first reserved matters stage a lighting strategy will be submitted ensuring that all woodland edges surrounding the site remain dark with minimal lux levels along the woodland and hedgerow corridors.
>
> Reason: To ensure the protection and enhancement of bat foraging habitat

However the appellant has had ample time to undertake an activity survey and is maintaining their position that further survey is not required.

1.26 **Reptiles**

1.27 I am pleased to note that a full reptile survey has been undertaken on site and we now know the species type and size of the population. However I would generally require 8 visits for population size to be ascertained accurately whereas in this case only six visits were undertaken. A good/medium population of slow worm were found to be present throughout the site. As a good population is indicated by a maximum count of 5-10 individuals this population is at the high end of a medium population. Two thirds of the foraging habitat will be lost to development with only one third retained. Within Natural England's Standing Advice criteria for receptor sites for translocation are detailed.

- *as close as possible to the development site, and within the same local planning authority if possible.* **In this case the receptor site is just outside the red line boundary**
- *that is at least the same size as the habitat that will be lost, and larger if the habitat to be lost is high quality (you can provide smaller habitat if it's substantially better*

*quality)***As two thirds of the habitat is to be lost we would expect an area of similar size to ensure that the slow worm population have enough foraging and hibernation resources and room to spread**

- *that will serve the same function as the habitat to be lost, eg it has hibernation features* **In this case natural hibernation features such as scrub and bramble are being removed and replaced by artificial hibernacula**
- *with similar habitat to the area that will be lost, including water bodies* **The nature of the habitat is identical to that lost but already supports part of the population**
- *that doesn't currently support the same species, but can be improved to make it suitable* **The translocation site supports the same species. Although Natural England state that you can introduce small numbers of reptiles to an area with an existing population if you have improved the habitat the slow worm population on the appeal site is medium rather than small and there is little enhancement to the remaining grassland with proposed management likely to decrease rather than increase carrying capacity.**

1.28 In the light of the criteria above and to ensure the slow worm population is protected from harm in the long term, as required by legislation, it is my view that the proposed mitigation is too small an area to support the on-site reptile population. Although mitigation strategies can be conditioned, within the outline application we request that reptile receptor sites are identified to ensure adiquite space and mature habitats are available for the translocated animals.

1.29 In respect of the mitigationif the ispector is minded to issue consent the following condition should be attched to any permission granted.

> Before construction commences a Reptile translocation, habitat creation, mitigation, management and monitoring strategy will be submitted to and agreed by Eastleigh Borough Council. The strategy will include details of receptor site(s) with an area equivalent to that lost within the development.
>
> Reason: To ensure reptiles are protected from harm