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Hampshire & Isle of Wight
Wildlife Trust
Protecting wildlife. Inspiring people.



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2nd December 2013

Your Ref:

Our Ref: 13.60.3.35 Johnson's Coppice, Waterlooille

Dear Rachael

APP/13/01074 - Change of use from woodland to mixed use of woodland and natural pet cemetery – Johnston's Coppice, Stakes Hill Road, Waterlooille

DESIGNATED SITES:

Johnston's Coppice – Site of Importance for Nature Conservation

The Wildlife Trust has been made aware of this application through our weekly screening of planning applications. We **object** to this application for the following reasons.

Background

The proposals for the site are for a change of use from woodland to the mixed use of a woodland and natural pet cemetery. The site is located immediately to the west of the A3M motorway and is situated between the urban developments of Purbrook to the west and Havant to the east, at National Grid Reference SU 691 079. The site itself consists of an area of semi-natural woodland which was formerly part of a much larger expanse of woodland. The previous development of the A3M to the east, and Purbrook Way to the south, has now fragmented this once contiguous area of woodland. However, remnants of the larger woodland still exist to the south, Gundymoor Wood and Little Park Wood, to the south-east Little Park Wood and the north-east, Neville's Park Wood. The site itself and all of the aforementioned surrounding woodlands are designated as SINCs.

Designated Sites

The site itself is designated a SINC known as Johnston's Copse and is designated as follows;

1A Woodland – Ancient Semi-natural Woodland.

The designation refers to the fact that this area of woodland has developed particular characteristics as a result of its long continuity. In addition the dominant and constant vegetation types are native to Britain and the community present conforms to the range of natural vegetation types. The site has been designated by the council since it is considered to be a site which is of

particular importance for nature conservation within Hampshire. The Trust is strongly opposed to the development of any sites which have been designated for their nature conservation value. Ancient woodlands are an irreplaceable resource that, in accordance with Natural England's Standing Advice, should be restored and managed accordingly, not developed.

Policy

National Planning Policy Framework

The National Planning Policy Framework (2012) is a key government policy document for reference with regard to ancient woodland planning cases. The importance of ancient woodlands is reflected by their specific inclusion in the NPPF, which states (paragraph 118, Point 5):

*"planning permission should be refused for **development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland** (our emphasis) and the loss of aged or veteran trees found outside ancient woodland, unless the need for, and benefits of, the development in that location clearly outweigh the loss;"*

This statement in the NPPF provides clear recognition in government policy of the irreplaceable nature of this habitat.

Havant Borough Core Strategy 2011

This application should be considered under Policy CS11 Protecting and Enhancing the Special Environment and Heritage of Havant Borough. It states that Planning permission will be granted for development that:-

- Has particular regard to the following hierarchy of nature conservation designations within the borough (as identified on the Proposals Map):

(i) Special Protection Areas (SPA), Special Areas of Conservation (SAC) and Ramsar [International].

(ii) Sites of Special Scientific Interest (SSSI) and National Nature Reserves [National].

(iii) Sites of Importance for Nature Conservation (SINC), Local Nature Reserves (LNR), other Ancient Woodland not identified in (ii) above [Local].

Paragraph 7.06 states *"In addition to the many international and national nature and heritage designations there are a variety of local designations for biodiversity, heritage and landscape. These designations are Sites of Importance for Nature Conservation (SINCs), conservation areas, a local list of buildings of historic or architectural interest and land identified as gaps between settlements that maintain their separate identities and the distinctive landscape character areas of the borough. National planning policy allows local designations to be made where they are regionally and locally important to the character of the borough. **The council believes that these designations are essential to maintaining and enhancing the natural and built heritage of the borough and so will be protected through the HBLDF policies** (our emphasis). All the nature and heritage designations are important for their own sake; additionally they play a critical role in the wellbeing of the borough's residents and visitors"*

Given the proposals for the site, we do not consider that using an important wildlife area, which has been designated for its nature conservation value, as a pet cemetery, outweighs the deterioration that would result as a consequence of the proposals. Furthermore, we consider that

this site will not be maintained and enhanced as a result of the proposals, and therefore will not be protected contrary to the policies in the Havant Borough Local Development Framework.

Protected Species

This application has been submitted with insufficient survey information and therefore it will not be possible for the council to make an informed assessment as to the impacts of the proposals on protected species that may be present at the site. The only information provided includes random breeding bird records that appear not to have been carried out using the recognised and best practice survey methods, and Hampshire Biodiversity Information Centre (HBIC) data from 2007. It appears that a professional ecologist has not been appointed to carry out survey work and the required impact assessments.

With regard to protected species we note that there are ponds on site that could have the potential to support great crested newts *Triturus cristatus* and there are records of the hazel dormouse *Muscardinus avellanarius* within one kilometre of the site, but most notably there is a record on the HBIC database from 2007 within 100 metres of the site. May we remind you that both the great crested newt and hazel dormouse are protected under the European Union Directives on the Conservation of Natural Habitats and Wild Flora and Fauna (92/43/EEC). This legislation is transposed into UK law through the Conservation of Habitats and Species Regulations 2010 (as amended)(hereafter referred to as the Habitats Regulations).

Regulation 41 of the Habitats Regulations makes it an offence to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2 (European protected species) and disturb or destroy their habitats. A development that would contravene the protection afforded to European protected species requires a derogation (in the form of a licence) from the provisions of the Habitats Directive. A court judgment handed down in June 2009¹ makes it clear that, notwithstanding the licensing regime, the Local Planning Authority must address its mind to three derogation tests when deciding whether to grant planning permission for a development which could harm a European protected species. A Local Planning Authority failing to do so would be in breach of Regulation 3(4) of the Conservation Regulations. It is a requirement that all public bodies have regard to the requirements of the Regulations when exercising their functions.

Further consideration should be given to species that are included on the Wildlife and Countryside Act 1981 (as amended). For example all the common native reptile species (grass snake *Natrix natrix*, Adder *Vipera berus*, slow-worm *Anguis fragilis* and common lizard *Zootoca vivipara*) are protected under the Wildlife and Countryside Act. This makes it an offence to intentionally kill, injure, disturb or destroy a common reptile species or its habitat. It is a material consideration of the local authority to consider species protected under the Wildlife and Countryside Act when assessing any application. In the absence of detailed survey information it will not be possible for the council to make this assessment.

Conclusion

In conclusion, the Wildlife Trust objects to this application since it is located wholly within a county designated wildlife site, and is contrary of policies within the NPPF and the Havant Borough Local Development Framework. Furthermore this application has been submitted with insufficient ecological survey data and therefore it will not be possible for the local authority to fully consider the potential impacts of European and nationally protected species.

¹ Judgment handed down by His Honour Judge Waksman QC sitting as a judge of the High Court at the start of June 2009 in the case of R (on the application of Simon Woolley) v Cheshire East Borough Council. The judgment clarified for the first time the legal duty of a Local Planning Authority when determining a planning application for a development which may have an impact on European Protected Species ("EPS"), such as bats, great crested newts, dormice or otters.

The above advice is given based on the information made available at this time and may change should further or amended details be submitted. If you wish to discuss these matters further, then please do not hesitate to do so. I also ask that you keep the Trust informed of the progress and outcome of this application.

Yours sincerely



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