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FAO Councillor K Jarman

27 March 2024

Our reference. APC/Ecol/270324

Dear Ms Singleton,

Re: Planning Application Ref. AL/11/24/OUT – Land East of Westergate

As requested, I have addressed some of the concerns raised in regard to the ecological evidence and mitigation for the planning application cited above, within my comments below.

Introduction

The proposed site has been widely used for recreational purposes by members of the public for many years and is known to be rich in local wildlife. It forms part of an important wildlife corridor that serves to connect the Coastal Plain in the south to the South Downs National Park in the north.

An Ecological Impact Assessment (EcIA), Environmental Statement and Shadow Habitats Regulation Assessment (HRA) have all been provided by EcoSupport Ltd, to identify ecological factors, evaluate potential ecological impacts and make appropriate recommendations for mitigation and ecological enhancements for the proposed development site. However, I have scrutinized these documents and I find that the survey methods conducted for both bats and water voles have not complied with best-practice guidance. Consequently, the subsequent

recommendations are considered to be insufficient to satisfy all of the relevant legal and planning policy obligations that are required.

Bats

Current Level of Assessment

The supplied Shadow HRA asserts in Table 2 of the SCREENING ASSESSMENT that *"The boundary habitats on site provide foraging and commuting resources for common, rarer and rarest species of bat, and bats associated with Singleton and Cocking Tunnels SAC. The development will result in the loss of some hedgerows on-site, and, if unmitigated, potential impacts through root compaction and damage to retained trees/tree lines on commuting routes. Additionally, the development will result in the permanent loss of bat foraging habitat in the form of the grassland and a small area of wet woodland (in which a Bechstein's Bat was trapped during Harp trapping surveys). Therefore, it is considered the development will result in a likely significant adverse effect to Annex 1* [read Annex 2] *species within the SAC."* It should also be noted that a number of trees are to be removed from the site and although these trees are not confirmed to have significant bat roost potential, they do still form part of the foraging and commuting habitat used by bats within the site.

Table 2 of the SCREENING ASSESSMENT goes on to state that *"…individual Barbastelles were identified commuting across the site during static surveys completed between April-August 2023, and one lactating female was found during the trapping surveys. One Bechstein's Bat was identified shortly after sunset within the wet woodland. Day roosting preferences for Bechstein's bat include woodpecker holes and crevices within Crack Willow (Salix fragilis) which is present within the wet woodland on-site. This bat was originally tagged in Binsted (over 5km away) indicating that this individual was likely roosting on-site or very close by. Despite this, trees with at least moderate potential for roosting bats are being retained in the woodland as part of the proposals. One tree with low potential for roosting bats is proposed for removal within the wet woodland." "As mentioned above, both Barbastelle and Bechstein's bat were recorded as commuting across site between April-August 2023. Both bat species are known to generally avoid street lights compared to other bat species such as Pipistrellus spp., Nyctalus spp. and Serotine (Eptesicus serotinus). As such, these bat species which are light sensitive are at "a competitive disadvantage and are less able to forage successfully and efficiently. This can have a significant impact upon fitness and breeding success." (ILP and BCT, 2018). As the proposals involve increased artificial lighting in the form of street lights, light spill from new dwellings and security lighting, some loss of suitable bat foraging and commuting habitat will be disturbed during the operational phase of the development., in the absence of mitigation this would likely have a moderate adverse significant effect upon the bat species associated with the SAC."*

Table 4 of the SCREENING ASSESSMENT states that *"Whilst likely significant effects, or uncertainty over likely significant effects has already been identified for the proposed development alone, it should be noted that the following pathways may also result in likely significant effects in combination with other plans or projects:*

- *Damage or deterioration of supporting habitats, outside European site*
- *Development associated with the wider WEB strategic allocation includes 6 total applications for extensive*
- *development including the land north of Eastergate and north-west of Barnham single carriageway*
- *(WSCC/052/20), land north of Barnham Road and east of Fontwell Avenue hybrid application for 551 dwellings*
- *(BN/195/22/PL), Woodgate Centre (AL/107/21/PL) for 180 dwellings which all also fall within the 12km ZoI for Singleton and Cocking Tunnels SAC.*

"Development associated with the above applications has the potential to further directly impact suitable foraging and commuting habitat/routes for qualifying bat species associated with the SAC. The approved planning applications have already outlined mitigation for these potential impacts through the provision of new habitat creation measures (native hedgerows/trees/scrub/wildflower meadow). Application WSCC/052/20 includes a sensitive lighting strategy for bats, however, to-date mitigation for Barbastelles and Beckstein's Bat are to be agreed for application BN/195/22/PL. Therefore, an adverse effect is likely in combination."

Whilst mitigation has been proposed in the form of tree protection, careful lighting and the installation of bat boxes, no attempt has been made to consider the pre-development replacement of foraging and commuting habitat within the site – Section 7.7.7. of the Environmental Statement states that *"the development will result in the loss of 1.05 km of hedgerow/tree lines on site)."* A Biodiversity Net Gain Report does not appear to be available.

Appropriate Survey Methods

It was noted from the IcIA that Bechstein's and Barbastelle bats were captured on site during two trapping sessions undertaken within the site (although the full results of the trapping surveys were not provided). Surveys were reported to have followed best practice according to Collins, 2016[1]. Section 9.1 of the Guidance states that Advance Licence Bat Survey Techniques (ALBST) should

[1] Collins, J. (ed) (2016). *Bat Surveys for Professional Ecologists. Good Practice Guidelines (3rd edition).* Bat Conservation Trust, London. [superceded]

be appropriate for high impact developments at a landscape scale affecting rare bat species, for example, Annex II species (such as Bechstein's and/or barbastelle) or features of SSSIs. Bechstein's bat is very difficult to identify without handling or DNA sampling obtained from guano and therefore, they tend to be under recorded. Collins, 2016, Box 5, p.66 recommends ALBST as an appropriate method for this species, **with a minimum of <u>six trapping sessions</u> to be undertaken** across the active season. Collins, 2016 has since been superceded and has been replaced by Collins 2023[2]. However, Box 9.4, p.88 of this latest Guidance repeats the same advice given in the earlier edition and Section 9.2.34 of Collins, 2023 asserts that ***"Where sites are located within the known distribution of Bechstein's bat and suitable habitat for this species is likely to be impacted, then species-specific surveys are likely to be required. Mist nets and/or harp traps used with a lure emitting Bechstein's bat social calls is the recommended method of surveying for this species as these bats use quiet echolocation and, even when detected using bat detectors, they are very difficult/sometimes impossible to distinguish from other Myotis bat species."***

A walkover survey was carried out during January, which is a sub-optimal time of year to assess the quality of habitat within the site. A botanical survey and an invertebrate survey were not conducted at all. It is clear that these would have helped to understand the importance of the foraging habitat for bats and to inform the mitigation requirements.

<u>Relevant Legislation and Guidance for bats</u>

Par. 99 of the ODPM Circular 2005 highlights 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. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted*."

All British bat species are defined in UK law as 'Protected Species' under Schedule 2 of the Conservation of Habitats and Species Regulations (Habitats Regulations) 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

[2] Collins, J. (ed.) (2023). *Bat Surveys for Professional Ecologists: Good Practice Guidelines (4th edition)*. Bat Conservation Trust, London. Available online at: https://cdn.bats.org.uk/uploads/pdf/Resources/For-professionals/Bat-Survey-Guidelines-23-FINAL-NO-PRINT-10.10.23.pdf?v=1696925348.

The Habitats Regulations place a duty upon the Competent Authority (under Regulation (63)) to exercise its duty in appropriately assessing the potential impacts of planned developments upon the 'National Site Network' of protected sites (formerly European Natura 2000 sites, which includes SAC sites) through the implementation of a 'Habitats Regulations Assessment' (HRA). to test if a plan or project proposal could significantly harm the designated features of a site. A plan or project will only pass the required integrity test if the HRA can show that there is no reasonable scientific doubt that the proposal will not have an adverse effect on the integrity of the site.

Certain wild animals (including bats) are also entitled to protection from disturbance under Regulation 43 (1)(b) of the Habitats Regulations. Regulation 43 (2) states that *"For the purposes of paragraph (1)(b), disturbance of animals includes in particular any disturbance which is likely to impair their ability to survive, to breed or reproduce, or to rear or nurture their young; or in the case of animals of a hibernating or migratory species, to hibernate or migrate; or to affect significantly the local distribution or abundance of the species to which they belong."*

Therefore, as the loss or damage of habitats, which are important for foraging and commuting bats, may result in roosts being abandoned and bats not being able to forage, it can be concluded therefore, that the Habitat Regulations affords protection to bat foraging and commuting habitats.

Sufficient information is required to provide the LPA with certainty of impacts on legally protected and Priority species and enable it to demonstrate compliance with its statutory duties under Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006. Seven UK bat species are listed under Section 41 (S41) of the NERC Act. These include barbastelle, Bechstein's, which have both been recorded within the Site.

The NERC Act supports Outcome 3 of the Government's Biodiversity 2020 strategy, which contains an ambition to ensure that *"By 2020, we will see an overall improvement in the status of our wildlife and will have prevented further human- induced extinctions of known threatened species."*

Subsection (5), clause 89 of The Environment Act 2021 (EA), requires that public authorities consider any relevant Local Nature Recovery Strategies (LNRS) as part of their strategic assessment of their functions, establishing the relationship between the two measures. LNRS map existing important areas for nature and show the opportunities that exist in an area to recover and enhance nature. LNRSs will support public authorities in deciding the most appropriate and effective action to take to further the biodiversity objective under new section 40(1A) of the NERC Act, and in turn subsection (5) will support the implementation of LNRS.

All bat species in England are also listed under Schedule 5 of the Wildlife and Countryside Act (WCA) 1981 (as amended), which confers additional protection under Section 9 of the act and

through the Countryside and Rights of Way (CRoW) Act, 2000. This combined legislation means that it is a criminal offence to:

- deliberately capture, injure or kill a bat
- intentionally or recklessly disturb a bat in its roost or deliberately disturb a group of bats
- damage or destroy a bat resting place or roost (even if bats are not occupying the roost at the time)
- possess, advertise, sell or exchange a bat (dead or alive) or any part of a bat, or to transport a bat or any part of a bat for this purpose
- intentionally or recklessly obstruct access to a bat roost.

The UK is a signatory to "*The Agreement on the Conservation of Populations of European Bats*," or "*EUROBATS*," which came into force in 1994 (and was signed by the UK Government in 1996), under the auspices of the "*Convention on the Conservation of Migratory Species of Wild Animals*" – more widely known as "*The Bonn Convention 1991*." Under the Bonn Convention 1991, the UK is required to identify and provide protection from damage or disturbance to important feeding areas for bats. Under the agreement, a bat roost is "*any structure or place which any bat uses for shelter or protection*". Bats tend to regularly reuse the same roosts. Therefore, legal opinion is that the protection of bat roosts is required regardless of whether bats are present or not – there is currently no guidance on when a roost ceases to be protected if it is not used by bats.

The Sussex Bat SAC Protocol (2015) (SBSP) has been produced by Natural England and the South Downs National Park authority. It sets out how to assess planning applications for impact on the bat species for which the Singleton and Cocking Tunnels SAC is designated. Barbastelle and Bechstein's bats are both designated as qualifying features of the site. The provisions set out within the SBSP include a 12km wider conservation area, which extends into part of the site area.
The Singleton and Cocking Tunnels SAC is primarily a hibernation roost from which bats disperse in spring across a wide area, forming maternity roosts that in turn have commuting flight lines and foraging areas linked to them. All of these dispersal areas are defined in the SBSP as 'functionally linked habitat', which is necessary to maintain the favourable conservation status of the Qualifying Feature species for which the SAC was designated.
SBPS p.5 states that *"Bats roosting within the SACs rely on land outside of the site boundaries. Such land which is required to sustain the bats associated with the SACs is referred to as being 'functionally linked' to the SAC. Where impacts to such functionally linked land could result in significant effects to the bat populations associated with the SAC, full consideration needs to be undertaken under the Habitats Regulations (in the same way as habitat in the SAC)."* SBPS p.4 sets out a 6.5km key conservation area and a 12km wider conservation area. It should be noted that in the case of Singleton and Cocking Tunnels SAC, some known maternity roosts linked to the SAC (Slindon and Lodsworth) lie in the wider (6.5 to 12km) area. For the Singleton and Cocking Tunnels SAC only a few 'linked' roosts have been identified to date and the wider use of the landscape by

bats from this SAC is not well understood (SBPS p.3). The 12km zone has therefore greater significance for the required precautionary approach in managing potential impacts on the qualifying species of this site.

The 'European Site Conservation Objectives for Singleton and Cocking Tunnels Special Area of Conservation Site code: UK0030337' (ESCO) (CD12.17) and 'European Site Conservation Objectives: Supplementary advice on conserving and restoring site features Singleton and Cocking Tunnels Special Area of Conservation (SAC) Site Code: UK0030337' (ESCOSA), describes the Singleton and Cocking Tunnels SAC as one of the most important sites for hibernating bats in south-east England. According to ESCOSA, p.4 ***"The barbastelle is one of the UK's rarest mammals. Very few breeding sites are currently known in the UK and it is important that surrounding environments of these and winter hibernation sites are maintained. It is thought that they prefer pastoral landscapes with deciduous woodland, wet meadows and water bodies, such as woodland streams and rivers. …It is one of the rarest bats in western Europe.*** *Barbastelles appear to select cracks and crevices in wood for breeding, mostly in old or damaged trees, but cracks and crevices in the timbers of old buildings may also be used. Maternity colonies may move between suitable crevices within a small area, such as a piece of woodland or a complex of buildings."* It is not uncommon for maternity colonies of barbastelle bat to move frequently (within 1-3 days) between suitable crevices within a small area, such as a piece of woodland or a complex of buildings (ESCOSA, p.4). It is notable that barbastelle bats are rare throughout Europe. In the UK they are confined to southern England and Wales only (ESCOSA, p.4). Their population status is currently unknown (Mathews F., Coomer F., Wright J. and Kendall T. (2018). *Britain's Mammals 2018: The Mammal Society's Guide to their Population and Conservation Status*. The Mammal Society, London p.88).
Natural England Protected Species standing advice on bats (version of 14 January 2022) states that to inform the planning proposal so it can avoid harming bats as much as possible, **surveys must:** ***"…identify important flight routes and foraging areas used by bats close to proposed developments" and "The effect of a proposal on a bat population will need to consider the predicted level of impact based on the conservation status of the bat species affected" and "importance of the site for bats at a local and national level. For example, Bechstein's bat is rare and found in the UK only in southern England and south-east Wales, therefore proposals in these areas could be very significant to the national population of this species."***

Both Barbastelle and Bechstein's bat are listed as a 'Qualifying Feature' of the Singleton and Cocking Tunnels (SCT) Special Area of Conservation (SAC).

Water Voles

Water voles are protected under the Wildlife and Countryside Act 1981 (as amended). It is an offence to intentionally:

- kill, injure or take them
- possess or control them (alive or dead)

It is also an offence to intentionally or recklessly:

- damage or destroy a structure or place used for shelter or protection
- disturb them in a place used for shelter or protection
- obstruct access to a place used for shelter or protection

Water voles are also listed as rare and most threatened species under Section 41 of the Natural Environment and Rural Communities Act (2006).

The EcIA claims to have ruled out the presence of water vole Arvicola amphibius within the site. However, independent surveys for water vole, detailed within reports by Hughes, S. (2024). Water Vole Survey 20/06/2023. Arun and Rother Rivers Trust. Petworth and Gray's Ecology in March 2024 both found compelling evidence of water vole presence within the site. This brings into question the findings of the water vole survey carried out by EcoSupport Ltd. Best practice Guidance, Dean et al., 20163 para. 3.3.10 "…two visits should be undertaken in most cases: one in the first half of the season (mid-April to the end of June) and one in the second half of the season (July to September inclusive) [Although in the south-east of England these can commence from mid-March]."

Water vole have been identified within the Lidsey Rife. The proposed development plans to place a link road across the Rife. Construction of this feature will require mitigation for disturbance to water vole and potential loss of habitat. Mitigation will need to consider this along with ongoing disturbance from increased recreational pressures, disturbance from lighting, increased predation from domestic cats, dogs, rats etc. and potential pollution of the water course. Any displacement strategy must consider the mobility and density of the wider water vole population. The culvert beneath the railway line to the south of the site will present a barrier to dispersal, as will the polluted section of the rife to the north of the culvert. The developer must take appropriate measures to avoid any negative effects on water voles in their development proposal.

[3] Dean, M., Strachan, R., Gow, D. and Andrews, R. (2016). *The Water Vole Mitigation Handbook (The Mammal Society Mitigation Guidance Series)*. Eds Fiona Mathew and Paul Chanin. The Mammal Society, London.

Conclusion

Insufficient survey effort has been carried out to understand the potential impact upon Bechstein's and barbastelle bats within the site. The application lacks properly informed detailed mitigation to adequately account for the loss of trees, hedges and grassland foraging and commuting habitat present within the site. In my professional opinion, when taking account of the potential impact upon the Qualifying Species of the Singleton and Cocking Tunnels SAC, it is not possible to determine that a significant impact upon the SAC site would be avoided.

Further water vole survey is required to determine the population density and to identify impact areas. A comprehensive mitigation and enhancement plan for water vole will be required to avoid a negative impact on water vole within the site and the wider area.

Qualifications

My name is Nick Gray. I am an Independent Ecologist. I hold a BSc (Hons) degree in Natural Sciences with Biology and I am an Associate member of the Chartered Institute for Ecology and Environmental Management (ACIEEM). I am registered to hold Natural England protected species survey licenses for bats, hazel dormouse *Muscardinus avellanarius* and great crested newt *Triturus cristatus.* I have considerable experience as a consultant ecologist, surveying and monitoring habitats and species for both development proposals and for conservation. I have been the Named Ecologist on numerous Natural England Protected Species Mitigation Licences for bats. On several occasions, I have provided my services at the request of a Local Authority to act as an 'Expert Witness' at Public Enquiry hearings for ecological matters concerning planning and development. I am a member of the Sussex Bat Group (SxBG) Committee and act as the SxBG coordinator and team leader for the National Bat Monitoring Programme (Winter Hibernation Counts) at several important bat hibernation roost sites across West Sussex. Some of these sites are part of the UK National Site Network and they include the nationally important SCT SAC. I have previously provided expert advice on bats found within the SCT SAC to a number of wildlife conservation organisations, ecological consultancies, Natural England, Local Authorities and a variety of media organisations (the latter has required me to appear several times on national and local television, specifically to show and discuss the bats using the West Dean, Singleton and Cocking Tunnels).

I have conducted numerous bat surveys within the Westergate area over several years and acquired a comprehensive understanding of bat activity within the Chichester and Arun Coastal

Plain area (including areas close to and within the proposed development site) on behalf of Local Authorities, Parish Councils and non-government organisations, with a particular focus on identifying wildlife corridors linking the areas of the Coastal Plain to the South Downs National Park, to help evaluate the importance of these as wildlife corridors for bats and other wildlife.

I confirm that the opinions expressed are my true and professional opinions.