



## Directorate for Planning, Growth & Sustainability

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**Ecology**  
**Planning Application Response**  
**F.A.O. Melanie Beech**

**Date:** 04 January 2024

**From:** Agni-Louiza Arampoglou, Ecology Officer

Application reference:	PL/22/4074/FA
Site:	St Leonards Church Hall, Glebe Way, Chesham Bois, Buckinghamshire HP6 5ND
Proposal:	Redevelopment of the site to create a new multifunctional Parish Centre with cafe, day nursery building, replacement rectory with detached garage, 2 outbuildings to provide prayer room and substation/bin and bicycle store, associated parking and landscaping

### Discussion

I have reviewed all ecology information submitted to date (including Future Nature's report) and I have visited the surrounding area of the site (Chesham Bois Common and adjoining woodland parcels) several times since my initial response to the application.

#### **Biodiversity Net Gain**

When an application is submitted the most up to date version of the biodiversity metric upon application submission is recommended to be used. This was the case with this application site and the version 3.1 that was the most up to date metric version at the time of submission was used. Therefore, the information requested from the applicant was satisfactory at the time when we provided our comments. Upon corrections of some of the entries we were confident that the development will achieve a net gain in line with local policy, the NPPF and Buckinghamshire Council Supplementary Planning Document.

During the determination process if a new version of the metric is published the Council does not request the metric to be updated and re-submitted as this would be an unreasonable cost to the applicant. Similarly with any other ecological survey guidance the Council cannot demand from an applicant to re-submit the same information if the guidance was updated within the interim determination period of an application. It is only the case if an application is refused or withdrawn

and a new application is submitted for the same site that the Council can request the most updated survey guidelines to be used/most updated metric.

It is stated in Future Nature's report that *"The corresponding BNG result would therefore reduce significantly to -49.86% (-4.1 units). If proposing trees already in a 'medium' size this still only provides 3.58 units, and a corresponding output of -17.15% (-1.41 units)"* but without the excel metric I am not able to comment further.

It should be noted that we use the predicted size (the predicted canopy biomass according to each species root protection area) so we can review in detail the Urban Tree habitat category.

It was previously understood that only native species will be planted. Upon the discharge of the Landscape Ecological Management Plan condition the applicant will have to provide the detailed list of tree species to be planted therefore if the proposed trees do not fall in the medium size category that was entered in the 3.1 metric then we will not be able to recommend the discharge of the condition until we are satisfied that medium size trees will be planted and biodiversity net gain will be delivered. The information relating to biodiversity net gain upon submission was satisfactory and I visited the site to double check the baseline habitats that were entered in the metric.

### **Protected Species**

#### **Badger**

Natural England requests that local authorities keep badger records confidential to avoid the ill treatment of badgers. Therefore badger information should not be made public.

Badger surveys were undertaken upon continuous requests from the Council and two setts within the 30m site radius of the site were found to be active.

An objection to the proposal has not been raised given that the setts are not main setts and that a Natural England licence is likely to be granted similarly to other sites where annexe, subsidiary and outlier setts are closed for a development to go ahead and where a development will not adversely affect the badger population's foraging territory. The site is next to existing roads and the majority of the Common (associated woodland and grassland) will be retained for the continuous use of the badger population.

I would like to bring to your attention the appeal site APP/N0410/W/22/3299849 (application PL/21/3151/OA) where the Council stated that there will be adverse effects on the local badger population and the Inspector dismissed the appeal. In this instance, the Council will be at a weak position to defend that there will be adverse effects on the local badger population whilst viewing the extent of available habitat and existing habitat connectivity post development. Although setts need to be closed to safeguard badgers during construction it is difficult to claim that there will be adverse effects to the local badger population.

We need to be minded that badgers are loyal to the places that they occupy but that also setts change overtime thus an updated badger survey will need to be undertaken to inform the badger licence.

The Council must review the ecological information provided and assess if a protected species licence is likely to be granted by Natural England. This is the case with this application site.

It should be also noted that an artificial sett is required to be constructed as a replacement of a sett lost only if the sett lost is a main sett. In this instance there was no indication that either of the setts recorded was a main sett thus no further information was requested.

I have discussed the findings of the badger surveys with a senior ecology officer who was also in agreement that a Natural England licence would be granted in this case for the closure of setts, given the location of the site and the available habitat to badgers at the wider surrounding Common.

Impacts of a development on protected species are thoroughly considered for each application site to which we are consulted. As we stated to the Buckinghamshire Badger Group we have to consider the legislation carefully and if a site is likely to be granted a development licence from Natural England. Under the Protection of Badgers Act 1992 it is an offence to cause the wilful killing or injury of a badger, intentionally or recklessly damage or destruct a sett, obstruct the access to a sett or disturb a badger occupying a sett. The licence from Natural England authorises the closure of a sett which has to be carried out in a way where no badgers are killed or injured. The specific mitigation measures, including a schedule of updated surveys, are expected via the submission of a Construction Environmental Management Plan to be secured via a condition to the application. The licence was also recommended to be secured via a condition.

### **Great crested newt**

Although the Newt Officer Chloe Roberts reviewed the submitted great crested newt information and she would be best to provide further comments relating to great crested newts, I have the following comments regarding the points raised by Future Nature.

It would be very helpful if Future Nature included a map of the additional ponds that they found during their assessment however I note that they provided the approximate grid reference of these ponds being SU 96316 99212. Over the late spring-summer I did not locate a suitable great crested newt waterbody within the surrounding area of the site apart from the pond which was subject to an updated eDNA survey which came back negative (no great crested newt DNA was detected in the pond). Perhaps the three ponds indicated by Future Nature were dry at time of my visits and I will revisit the site to locate these ponds.

For the Chesham Bois Parish Council's information, I am a licensed great crested newt surveyor and have been surveying ponds for 15 years. None of the ponds featured in the photographs provided are highly optimal for great crested newts due to the shaded conditions and lack of aquatic submerged vegetation which is needed for egg laying, however I have previously come across great crested newts in similar habitat conditions or even in places widely unsuitable (e.g. a breeding great crested newt population in a fountain).

The most likely priority species to be found on site remains to be the common toad and we expect to receive a detailed schedule of mitigation measures relating to the safeguarding of amphibians in the Construction Environmental Management Plan. It is commented by Chesham Bois Parish Council that other amphibians such as toads were not considered but this is not the case. A CEMP is required to safeguard all protected and priority species that can be found on site during construction. A specific survey for common toad can be requested if a pond is within the red line boundary of the site and is to be impacted on (the presence of a priority species in a pond changes the biodiversity net gain score as if priority species are present then the pond is classed as a priority pond in the metric, than a non-priority pond). In this case the nearest pond is outside the application boundary therefore no further priority species (common toad) assessment was requested, and it is also the case that the surrounding grassland and woodland of this pond will be retained post development.

### **Bats**

I have considered all the points raised by Future Nature about the uptake of the new bat loft and I would like to bring to your attention the recently published UK Bat Mitigation Guidelines (*Reason, P.F. and Wray, S. (2023). UK Bat Mitigation Guidelines: a guide to impact assessment, mitigation and compensation for developments affecting bats. Version 1.1. Chartered Institute of Ecology and Environmental Management, Ampfield.*)

Several studies found that the uptake of new bat lofts for brown long-eared bat are overall low and long-term monitoring is needed to determine the success of a mitigation project. It is not much the glazing of the main building that would be an issue than the proposed lighting. For this, we have recommended a sensitive lighting scheme to be secured via a condition.

We expect to see details of lux levels across the site and dark buffers maintained between the new bat loft and surrounding habitats. Interestingly, regarding glazing the UK Bat Mitigation Guidelines state that no studies so far have shown collision of bats with solar panels (which can be considered glazing structures): *“The fact that bats use echolocation to recognise smooth surfaces, with no collisions reported, suggests that some bat species may be adept at avoiding collision with flat surfaces; however, more recent work has indicated reduced echolocation when bats are flying close to angled mirrors and shiny surfaces (Corcoran & Weller, 2018)”*

There is no reference in the guidelines about glazing deterring bats to take residence in another nearby building, but quite the opposite there is a study of a maternity colony present in a roof where solar panels are present (thus there is a glazing structure in the actual roosting location). The guidelines only refer to glazing in relation to lighting. Thus, for the successful uptake of the new bat loft the following are key:

- Sensitive lighting scheme /dark zones of connective commuting habitat from the location of the roost access to the surrounding Common.
- The use of old timber/building materials in the new bat loft (from the building that supports the current roosts) and relocation of bat droppings into the new loft.
- The use of a hot box (as applicable) to create the same ‘like for like’ thermal conditions required for a maternity roost.
- On-going post development monitoring of the bat loft to reassess if any modifications of the new loft are needed.

It was stated that bats would need to pass over new buildings and car parking but by looking at aerial photography it appears that bats will be able to access the roost via available habitat retained as far as a dark zone is maintained.

Regarding the proposed green roof, it is of certainty that it will not benefit a number of protected or priority species using the site for foraging or dispersing through, but as far as it is not much higher than a two-storey building then there is likelihood that it can provide a suitable foraging habitat for bats (subject to a sensitive lighting scheme). It is understood from the elevation plans that it would not be much higher than a two-storey dwelling. A research study ‘Do Green Roofs Provide Habitat for Bats in Urban Areas? (by Huma Pearce and Charlotte L. Walters, Acta Chiropterologica, December 2012) found that factors affecting foraging activity apart whether the roof is biodiverse or a Sedum roof included the roof height (negative influence with increased height). Although a Sedum roof is proposed in this instance the results of the study indicated that pipistrelle species would forage over a Sedum roof albeit at a much lower scale than over a biodiverse roof. This is something that the applicant may like to consider and create a biodiverse roof instead of a Sedum roof.

#### **Additional concerns raised**

- *A significant increase in visitors to this site creates the potential to damage the adjacent Common and sensitive Priority Habitat through extra footfall, noise and disturbance to flora and fauna.*

It may be the case that people from further afield will visit the site for a particular event, but it is questionable how many of them will play football or walk the site with their dog off lead and disturb flora and fauna than visit only the venue.

*- The design of the main building could result in bird collisions with regard to the use of extensive glazing.*

From available studies factors that contribute in bird collisions with such structures include the surrounding habitat and whether the habitat is reflected on the glass surface, the surface area, time of day, seasonality and if the birds involved in collisions are resident or migrant (more collisions reported for migrant birds whether resident species may suffer fewer collisions), the height of a building and lighting inside and outside buildings (which can increase collisions especially with nocturnal migrants). There are various ways to deter birds from the glass panes including the use of tinted films, ultraviolet patterned glass and the use of blinds.

A similar structure of extensive glazing exists in the centre of Wendover Woods but to my knowledge no records of bird collisions have been reported so far.

*-The proximity of a proposed fire pit to adjacent vegetation at the boundary with the Old Rectory provides a risk of fire and spread to woodland.*

I agree that the fire pit is of concern and trust to receive further information relating to this in the Construction Environmental Management Plan.

*-Ground flora details were not included in reports.*

I have visited the site and viewed the ground flora, and I have no amendments to make on the baseline habitats that were reported in the biodiversity metric.

*-No species record search or other survey work in respect of bird assemblage at, or in close proximity to, the application site has been undertaken to ascertain the potential for adverse impact.*

The Council requests protected species surveys prior to determination if there is a reasonable likelihood of protected species in line with the ODPM Circular 06/2005 that states: *"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. **However, bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by development.** Where this is the case, the survey should be completed and any necessary measures to protect the species should be in place, through conditions and / or planning obligations before permission is granted."*

From my site visit there was no suitable habitat identified for nesting ground birds (e.g. skylarks) that will be affected as part of the proposal therefore a breeding bird survey was not requested. The safeguarding of nesting birds in trees and shrubs within the site is to be secured via the Construction Environmental Management Plan via a condition (works to be undertaken outside the nesting bird season that lasts approximately March to August (inclusive) or the areas affected to be checked for nesting birds immediately prior to works commencing. If nesting birds are present the works cannot proceed until the young have fledged.)

*-New fencing is proposed which will form barriers to fauna which utilise the woodland and the application site for foraging.*

This has not been agreed upon reviewing the ecological information of the site and I trust further information will be provided in the Construction Environmental Management Plan. If this point refers to exclusion badger fencing then this is something that Natural England will respond to when the licence application is made, however we expect to see a full schedule of badger mitigation measures in the Construction Environmental Management Plan.

### **Conclusions**

I have reviewed the ecological information submitted for this application site, visited the site several times and considered all the points raised and I am not in the position to object to the proposal.

In line with the NPPF mitigation measures are proposed that if successfully implemented the proposed development is considered unlikely to cause adverse effects on protected species and biodiversity.

It should be noted that with any project the key to successful mitigation, the safeguarding of protected species during construction and the long-term survival of species post development, relies on the engagement of the applicant/owner and builders working on site with their consultant ecologist/ecological clerk of works and the expertise of the appointed ecologist but also on available funding for post development monitoring (in particular for determining the success of bat mitigation projects). For checking if there was an uptake by brown long-eared bats of the new bat loft, and if modifications of the loft will be needed, the applicant should be prepared to allocate funding or source volunteer surveys for a minimum period of 5 years post development. Several studies have found that the uptake of building roosts increases over time thus fewer later monitoring checks are better than intense early effort (i.e. it is not advised to carry out a monitoring survey immediately after construction, within year 1, but wait to commence monitoring surveys from year 2 onwards).

### **Legislation, Policy and Guidance**

#### **Bats**

All bat species and their roosts are protected under the Wildlife and Countryside Act 1981 (as amended) and are European Protected Species, protected under The Conservation of Habitats and Species Regulations 2017 (as amended). It is therefore illegal to kill, injure or handle any bat or obstruct access to, destroy or disturb any roost site that they use.

#### **European Protected Species Licensing**

Before granting planning permission, the local planning authority should satisfy itself that the impacts of the proposed development on European Protected Species (EPS) have been addressed and that if a protected species derogation licence is required, the licensing tests can be met and a licence is likely to be granted by Natural England.

As a EPS licence is required the applicant will need to provide the answers to all three licensing tests, alongside a mitigation strategy. The three tests are that:

1. the activity to be licensed must be for imperative reasons of overriding public interest or for public health and safety;
2. there must be no satisfactory alternative; and
3. favourable conservation status of the species must be maintained.

Together with the ecologist's report, which answers test 3, the applicant should provide written evidence for tests 1 & 2. This can be contained within the ecological report or as separate document. If the competent authority is satisfied that the three tests can be met, it should impose a planning condition preventing the development from proceeding without first receiving a copy of the EPS licence or correspondence stating that such a licence is not necessary. This approach ensures compliance with the Conservation of Habitats and Species Regulations 2017(as amended) and enables a local planning authority to discharge its obligations under the Crime and Disorder Act and its wider duties under Section 40 of the Natural Environment and Rural Communities Act 2006 in relation to protected species.

### **Nesting birds**

Under the Wildlife and Countryside Act 1981, as amended (section 1), it is an offence to remove, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this act. Buildings, trees and other vegetation are likely to contain nesting birds between 1<sup>st</sup> March and 31<sup>st</sup> August inclusive.

### **Great crested newt**

Great crested newts and their habitats are fully protected under the Conservation of Habitats and Species Regulations 2017 (as amended). Therefore it is illegal to capture, injure, kill, disturb or take great crested newts or to damage or destroy breeding sites or resting places. Under the Wildlife and Countryside Act 1981 (as amended) it is illegal to intentionally or recklessly disturb any great crested newts occupying a place of shelter or protection, or to obstruct access to any place of shelter or protection.

### **Badger**

Badgers and their setts (including tunnels) are protected under the Protection of Badgers Act 1992. The most likely offences through development include wilful killing and injury of a badger, intentional or reckless damage or destruction of a badger sett, obstruction of access to a sett, or to disturb a badger when it is occupying a sett.

### **Reptiles**

All reptile species are protected under the Wildlife and Countryside Act 1981 (as amended). It is an offence to intentionally kill or injure a reptile.

All reptile species are listed in Section 41 of the Natural Environment and Rural Communities Act as Species of Principal Importance – Priority Species.

### **NERC Act Section 41 Habitat and Species of Principal Importance - Priority Habitat and Species**

Local planning authorities have a duty to conserve and enhance biodiversity under the Natural Environment and Rural Communities Act 2006 (NERC Act 2006).

The NERC Act 2006 requires that the Section 41 habitats and species list be used to guide decision-makers, such as public authorities, in implementing their duty under Section 40 of the NERC Act 'to have due regard' to the conservation and enhancement of biodiversity when carrying out their normal functions.

### **Biodiversity Net Gain**

The Environment Act 2021 sets out the key components of mandatory biodiversity gain:

- Amends Town & Country Planning Act (TCPA);
- Minimum 10% gain required calculated using the Biodiversity Metric & approval of a biodiversity gain plan;
- Habitat secured for at least 30 years via planning obligations or conservation covenants;
- Delivered on-site, off-site or via a new statutory biodiversity credits scheme; and
- National register for net gain delivery sites

### **Biodiversity Net Gain Supplementary Planning Document**

The BNG SPD was adopted by Buckinghamshire Council. It sets out a Buckinghamshire process for achieving net gain and aids planning applicants in ensuring their development would result in a biodiversity net gain. It also sets out a Buckinghamshire process for compensating for losses of biodiversity using off-site habitats and guides landowners in offering their land for BNG.

### **National Planning Policy Framework**

Paragraph 174d of the NPPF requires that: *“Planning policies and decisions should contribute to and enhance the natural and local environment by ... minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressure”.*

The NPPF in section 179b states: *“promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.”*

The NPPF Paragraph 180a states *“When determining planning applications, local planning authorities should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.”*

The NPPF Paragraph 180d states *“When determining planning applications, local planning authorities should apply the following principles... development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.”*

### **Chiltern District Local Plan, Adopted September 1997 (CDLP) and Chiltern Core Strategy, Adopted 2011 (CCS)**

Buckinghamshire Council resolved to withdraw the Chiltern and South Bucks Local Plan 2036 on 21st October 2020. The Core Strategy for Chiltern District (adopted November 2011) Policy ‘CS24: Biodiversity’ states that: *“The Council will aim to conserve and enhance biodiversity within the District. In particular:*

- *the Council will work with its partners to protect and enhance legally protected species and all sites and networks of habitats of international, national, regional or local importance for wildlife or geology*
- *development proposals should protect biodiversity and provide for the long-term management, enhancement, restoration and, if possible, expansion of biodiversity, by aiming to restore or create suitable semi-natural habitats and ecological networks to sustain wildlife.*



*This will be in accordance with the Buckinghamshire Biodiversity Action Plan as well as the aims of the Biodiversity Opportunity Areas and the Chiltern AONB Management Plan.*

- *where development proposals are permitted, provision will be made to safeguard and where possible enhance any ecological interest.*
- *where, in exceptional circumstances, development outweighs any adverse effect upon the biodiversity of the site and there are no reasonable alternative sites available, replacement habitat of higher quality will be provided through mitigation and/or compensation to achieve a net gain in biodiversity.*

*The Delivery DPD will indicate on maps the location of the various sites mentioned above as required by PPS9.”*

If you have any queries regarding this advice, please do not hesitate to contact me.

Yours sincerely,

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