

Planning ref HPK/2020/0301
Appeal ref APP/H1033/W/21/3272745

Appeal by Treville Properties against the refusal of
planning permission for 7 dwellings at Taxal Edge,
Whaley Bridge.

Hearing Statement on Ecology on behalf of Treville
Properties

By

Andrew Baker BSc (Hons), FCIEEM



Baker Consultants Ltd
Cromford Station
Cromford Bridge
Matlock
Derbyshire DE4 5JJ
info@bakerconsultants.co.uk
www.bakerconsultants.co.uk
01629 593958

Company No. 6702156
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1. Qualifications

1. I am Andrew Baker and I am the founder and Director of the ecological consultancy Baker Consultants Limited, which I established in March 2009. I hold the degree of Bachelor of Science with Honours in Botany from the University of Nottingham (1986). I have been a member of the Chartered Institute of Ecology and Environmental Management (CIEEM) since 1994.
2. I have been a practising ecologist for over 30 years, having worked throughout the UK for organisations such as English Nature (now Natural England), Nottinghamshire Wildlife Trust, the Peak District National Park Authority, large civil engineering consultancies and private ecological firms. Much of my work involves providing expert advice to clients on Environmental Impact Assessments (EIA) and Habitats Regulations Assessments (HRA) of the impacts of proposals on international sites (Special Protection Areas (SPA), Special Areas of Conservation (SAC) and Ramsar sites) and Sites of Special Scientific Interest (SSSI).
3. In my work in private practice my clients come from the public, private and voluntary sectors. Public sector clients include English Nature (as was), the Department of the Environment Transport and the Regions (as was), the Environment Agency and Local Planning Authorities. My work for private clients includes numerous residential projects ranging from small schemes of two or three dwellings to large urban extensions of 2000 plus units. I have also worked on many leisure projects (theme parks, caravan sites and hotels) and large port and airport developments.
4. I am actively involved in the development of the ecological profession. I have published articles on EIA and protected species legislation. I am a member of the United Kingdom Environmental Law Association (UKELA) and a former Convenor of its Nature Conservation Working Group. As Convenor of the working group I was responsible for coordinating comments on emerging wildlife legislation and policy, such as the now superseded Planning Policy Statement 9. In 2003 I was a member of the then Highways Agency's (now Highways England) Translocation Steering Group, which subsequently published a best practice guide on habitat

translocation. More recently I was a member of the steering group working with the British Standards Institute and the Association of Local Government Ecologists to produce a 'Publicly Available Specification' that provides recommendations for the integration of biodiversity conservation into land use and spatial planning in the UK. This was the forerunner of British Standard BS42020.

5. I am a long standing member on CIEEM's disciplinary board and I am frequently called upon to hear cases that are brought against members of the profession, often chairing the hearings.
6. I am an expert in the practical application of nature conservation law and I have published widely on the subject including (along with Browne Jacobson Solicitors) the 2nd Edition of 'A Manual of Nature Conservation Law' edited by Michael Fry. Through my involvement in the UKELA I have been actively involved in the development of nature conservation law and planning policy that affects ecological issues. I have specific expertise of the practical application of this area of law and I teach on European and domestic nature conservation law and its associated guidance and policy. In 2015 I was made a Fellow of CIEEM in recognition of my contribution to this field of work.
7. I am frequently called upon to give evidence to both local plan examinations and public inquiries into individual planning applications and I have also presented evidence to a Parliamentary Select Committee.
8. I have considerable experience in the ecology of bats and the application of the law which protects these species as well as the current guidance on licensing and mitigation measures. In the past I held what was then called a survey license issued by English Nature (as it then was) and I was a volunteer bat worker for many years. I have also held 'development' licenses again granted by Natural England. Baker Consultants has a team of people who hold Class 1 and 2 survey licenses. That team is led by Carlos Abrahams our Technical Director who holds the majority of our licenses which relate to proposed developments. Mr Abrahams accompanied me on my site visit and has contributed to the preparation of my witness statement.

9. The evidence I have prepared and provided to this hearing is true and I confirm that the opinions I express here are my true and professional judgements based on scientific evidence and my professional experience.

2. Background and scope of evidence

10. The proposed development will require the demolition of the existing buildings at Taxal Edge, Whaley Bridge, SK23 7EJ. The main building was the subject of a bat survey which was carried out between May and July 2020 the results of which were set out in the report of August 2020 (NGL ecology Ltd Taxal Edge Bat Survey Report).
11. The 2020 bat survey report identified two confirmed bat roosting sites supporting single bats and another possible bat roost. One roost was confirmed by the presence of droppings only, another confirmed by observation of a single bat emerging from the building, and a possible but not confirmed third roost area, again from a potential emergence of single bat. A maximum of two individual bats were thought to be present of the species common pipistrelle (*Pipistrellus pipistrellus*).
12. The bat surveys report stated that the bat survey data would only be valid *'for 18 months from the date of the last survey on site, i.e. until 29/01/2020.'* The Planning Inspectorate wrote to the applicant on (date ref), *"It is noted that the validity of the findings of a bat survey provided in evidence is about to expire. You may therefore wish to consider updating this survey or ensure arrangements for appropriate representation at the hearing are made to address that relevant matter."*
13. All species of bats are protected in both the Wildlife and Countryside 1981 (as amended) and the Conservation of Habitat and Species Regulations 2017 (as amended) and are a 'European Protected Species' (EPS) under the latter regulations.
14. The Government has issued advice on making planning decision where bats are affected - <https://www.gov.uk/guidance/bats-advice-for-making-planning-decisions> . There is also advice on EPS licensing and how this should be considered in the planning process <https://www.gov.uk/guidance/protected-species-how-to-review-planning-applications#make-a-decision-about-a-planning-application>.
15. Bat roost activity surveys (which characterise the nature and size of a roost) can only be carried out during the summer months when the bats are active. Given the

date of the hearing for the appeal it is therefore not possible to carry out updated bat activity surveys. I have therefore been asked by the applicant to review the bat data and based on my own site visit,

- assess whether the result of the 2020 bat surveys are likely to remain valid,
- assess the ecological value of the bat roost
- provide evidence to the hearing on how the presence of bats should be correctly treated in the planning process.

16. I carried out a site survey on 8th February 2022 accompanied by my Technical Director Carlos Abrahams. Mr Abrahams is a highly experienced bat worker having held a general bat survey license since 2003 and also has held and holds numerous 'development' licenses on behalf of our clients. Mr Abrahams has produced a witness statement which can be found at Appendix 1 of this statement.

3. Planning and Policy Context

17. The presence of bats at the site was not a reason for refusal, however the presence of bats which are an EPS is material to the decision-making process.

National Planning Policy Framework (July 2021)

18. Paragraph 174 of the National Planning Policy Framework (NPPF) requires,

174. Planning policies and decisions should contribute to and enhance the natural and local environment by:
- a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);

19. Paragraph 180 of the Framework goes on to say,

180. 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;

High Peak Borough Council Local Plan 2016

20. The High Peak Local Plan 2016 policy EQ5 deals with Biodiversity. The overarching policy is,

Policy EQ 5

Biodiversity

The biodiversity and geological resources of the Plan Area and its surroundings will be conserved and where possible enhanced by ensuring that development proposals will not result in significant harm to biodiversity or geodiversity interests.

21. The policy then sets out the detail of how this will be achieved.

4. Impacts of the development

22. While the NGL Ecology report states that their surveys would be out of date within 18 months the Chartered Institute of Ecology and Environment Management (CIEEM) has issued a guidance note on the lifespan of ecological reports and surveys (<https://cieem.net/wp-content/uploads/2019/04/Advice-Note.pdf>) which is also referred to in the planning guidance. For surveys which are between 18 month and 3 years old the guidance advises that a professional ecologist will need to undertake a site visit to assess whether there have been significant changes to the to the habitats present. During our site survey we found no evidence that would suggest that the situations regarding the bat roosts present would have changed during the intervening time since the bat surveys were carried out in 2020. There have been no material changes to the building since the surveys were completed nor have there been any gross changes in habitat surrounding the building that would be likely change the character of the bat activity at the site and we can see no reason why the use of the building by bats would have changed i.e. the site is likely to continue to support one or possibly two small roosts. The CIEEM advice note mentions that consideration should be given as to whether a desk study should be undertaken. Given the species involved and the nature of the records that would be provided by the local records centre we do not consider that an update data drawl would reveal any relevant information as Common Pipistrelle bats so common and widespread.
23. The proposed development will affect the bat roosts that have been identified within the building. Given the above it is therefore necessary to consider the value of the roost present and where or not a license would likely to be granted by Natural England should the planning appeal be upheld.
24. The species found at the site are Common Pipistrelle bats. They are the most common species found in the UK and frequently the subject of bat mitigation licenses. The roost identified is very small (only one or two bats recorded) it should be noted that Common Pipistrelle breeding roosts can often exceed 250 - 300 individuals. It is clear therefore that the roost recorded at the site is not significant in terms of the local population.

25. It should also be noted that, given the location of the roost, *any* major works to the building would require a bat license to be put in place. So, for example, the extant planning permissions for renovation of the building (Planning Ref HPK/2009/0689 and HPK/2013/0503) would need a bat license to be in place before works could commence.
26. I have asked Mr Abrahams to consider how likely it would be that Natural England would grant a 'development' license should the appeal be granted and he has concluded that grant of a license would be highly likely and would be '*business as usual*' based on his experience of gaining development licenses (see Appendix 1).
27. It should also be noted that prior to a 'development' license for bats being sought from Natural England any survey would need to be refreshed to inform the license application. This would be the case regardless of whether the development being undertaken were the implementation of the extant permission or the demolition of the existing building. This is the case for any license application where the survey data is very recent (i.e. the license application not in the same year as the surveys were carried out).

5. Conclusions

28. Having reviewed the NGL Ecology report and carried out a site visit of our own, Mr Abrahams and I are both of the view that the use of the site by bats is not likely to have changed since the bat surveys were carried out in 2020. The predetermination surveys can be relied upon.
29. It is our view that the presence of bats at the site is therefore not a constraint to upholding the appeal. The roost/s present within that site are small (one or possibly two bats) of a species which is both widespread and common (Common Pipistrelle). Loss of such roosts can be easily mitigated through simple measures such as the provision of bat boxes within a new building or within the surrounding area (see Mr Abrahams' evidence Appendix 1). It is our experience, based on other licenses which we hold that Natural England would certainly grant a license in this case and indeed could be addressed under a 'low impact license'.

Appendix 1 Statement of Mr Carlos Abrahams

Witness Statement by Carlos Abrahams BSc PgC MSc MCIEEM

Qualifications

31. My name is Carlos Abrahams and I have been Technical Director at Baker Consultants Ltd since March 2011. I have been a member of the Chartered Institute of Ecology and Environmental Management (CIEEM) since 1999, and have a BSc in Environmental Studies, a PgC in Zoology and a MSc in Environmental Management for Conservation and Recreation. I am also a part-time Senior Lecturer in Environmental Biology at Nottingham Trent University, where I am currently completing a PhD in bioacoustics.
32. I have been employed in ecology and nature conservation since 1991, and have been a consultant ecologist since 2001, with four companies. I have undertaken conservation and survey work for bats since the mid-1990s and have been a bat worker licensed by Natural England since March 2003 (2015-16660-CLS-CLS). During this time, I have worked on a large number of bat mitigation licences throughout England, and currently hold thirteen such licences, with work on another ten having been completed in the last two years.
33. I accompanied Mr Baker on the site visit on 8th February 2022 and have contributed to the preparation of his witness statement.
34. The evidence I have prepared and provided to this hearing is true and I confirm that the opinions I express here are my true and professional judgements based on scientific evidence and my professional experience.

Background

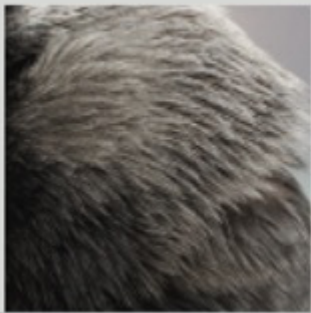
35. The proposed development will require the demolition of the existing buildings at Taxal Edge, Whaley Bridge, SK23 7EJ. The property was the subject of an extended Phase 1 habitat survey in March 2020, which assessed the main building to be of 'high' bat potential. This was followed by three bat survey visits, carried out in May, June and July 2020. These surveys are set out in the report of August 2020 (NLG Ecology Ltd., Taxal Edge Bat Survey Report).
36. The 2020 bat survey report identified two/three bat roost locations in the main building. Roost location A, beneath wooden cladding, was confirmed by the presence of droppings only on 21st May 2020. Roost location B was not definitively confirmed, but was a 'likely emergence' of a common pipistrelle from the eastern gable apex on 21st May 2020. Roost location C was identified by a common pipistrelle bat emerging from the flat-roofed extension on 18th June, with a single bat, which was not echolocating, also seen to re-enter this roost area on 29th July.
37. The NGL Ecology report correctly states that a European Protected Species Mitigation Licence will be required to permit development, once planning permission has been granted. The report also considers that the roosts relate to small numbers of non-breeding individuals, of a common bat species. As a result it would be eligible for a 'Low Impact Class Licence'.

Bat roost status and mitigation

38. The results presented in the NLG Ecology report identify confirmed common pipistrelle bat roosts within the main building. An appropriate level of survey effort was used to establish these findings, in accordance with the standard Bat Conservation Trust recommendations (Collins, J. (ed) 2016. Bat Surveys for Professional Ecologists: Good Practice Guidelines. BCT).
39. The site visit undertaken on 8th February 2022 allowed me to view the locations of all the identified roost locations (A, B and C) identified by NLG Ecology in 2020. The features all appeared to be typical roost features for pipistrelle bats, and their current condition appeared unchanged since 2020, based on the information and photographs provided in the NLG report. Therefore, given that the structure of the building and surrounding habitat appears unaltered since the 2020 bat survey,

there is no reason to suggest that use of the site by bats would have changed, and I am of the view that that 2020 survey remains valid.

40. Standard assessment criteria within the Bat Mitigation Guidelines (Mitchell-Jones, A.J. 2004. Bat Mitigation Guidelines. English Nature 2004) can be used to set survey findings in context. Roosts with '*individual bats of common species*' are considered to be of low conservation significance. Mitigation/compensation requirements for such a roost type have '*flexibility over provision of bat boxes, access to new buildings etc. No conditions about timing or monitoring*' (see Figure 4, p39 of the Guidelines).
41. Based upon the species concerned (common pipistrelle), and the small numbers of bats recorded, I agree with the status assessment provided by NLG Ecology. These are low status roosts, that can be relatively easily mitigated using standard procedures, and I see no reason why a mitigation licence could not be granted for the proposed development. The situation at Taxal Edge is entirely comparable to many of the bat mitigation licences that I currently hold, and that I have implemented in the past.
42. In conclusion, there can be a high level of confidence in being able to deliver an appropriate mitigation scheme that will ensure the local conservation status of the bat species concerned. Securing a Natural England bat licence for the proposed scheme, once planning has been granted, would be entirely 'business as usual' for a roost of this type. Therefore, it is my opinion that there is no reason for the presence of bats within the property to prevent the proposed development.



baker *consultants*