Burrell, Becky

From: Beth Fox <bfox@lincstrust.co.uk>
Sent: 04 August 2023 16:16
To: Simmons, Maxine
Cc: _planningadvice
Subject: RE: Planning application ref: H16-0136-23 - Ivanda Nursery

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Hi Maxine,

Thank you for responding to me on this issue so quickly and for taking the time to explain.

I agree that none of the footage appears to be onsite, and with the exception of the video of the muntjac where you can see the glass houses in the background, I cannot confirm the location of the footage. I understand that the lack of setts onsite means that there is no need for a wildlife licence and I do not think that planning permission for this site should be refused. For these reasons, our holding objection remains lifted and at this stage LWT are purely providing comments in a advisory manner.

My concern is that the impact of this development may not be limited to the site boundaries, and may therefore have a negative impact on the surrounding area. Thank you for explaining all the mitigations measures and attaching the report. It is reassuring to know that there will be a 6m area kept free of development although I wonder if a condition relating to managing this area for wildlife could be included to ensure it functions as a green corridor and does not just become an access route for the IDB. The maintenance of foraging and watering areas for wildlife is also something that could be secured via a condition. As the use of the adjacent drain by wildlife seems to be a potential issue, I think that a no-works buffer around the drain would also be a suitable mitigation measure to condition.

I appreciate the time and effort taken by yourself to ensure that the potential impacts of this development are limited.

Kind regards,

Beth Fox (she/her)
Conservation Officer
Lincolnshire Wildlife Trust

Mobile: 07983 855472





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Registered offices: Banovallum House, Manor House Street, Horncastle, Lincolnshire, LN9 5HF.

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From: Simmons, Maxine <Maxine.Simmons@sholland.gov.uk>
Sent: 04 August 2023 10:54
To: Beth Fox <bfox@lincstrust.co.uk>
Cc: _planningadvice <planningadvice@sholland.gov.uk>
Subject: RE: Planning application ref: H16-0136-23 - Ivanda Nursery

Dear Beth,

Thank you for your email. I have looked at the footage. To me this shows badgers in a domestic garden – do you think it is something different? Whilst the neighbour is nearby to the development site, he is not directly adjacent and is south of the Edward drain that borders the southern site. This footage doesn't show that there are badgers ***in*** the development site, it shows badgers in a garden. This footage was taken in February and May of this year. As the neighbour is south of the Edward Drain, from the neighbour's garden a badger would have to cross that drain which has quite steep sides. It doesn't mean it cannot happen, but this does not prove that badgers are on the site. They may well use it, but they may also use any domestic garden in this area.

Looking at Natural England's advice, it states in Table 2 that surveying for badgers can take place at any time of year.

In line with the advice, I can see that we should ask for a survey if:

-there is suitable habitat on the site to support the protected species
-it's likely that protected species are present and may be affected by the proposed development
-protected species are present but you're not sure if they'll be affected.

We have asked for and obtained a Preliminary Ecological Appraisal as a result of concerns about bats and newts. The survey we received is attached, which covers badgers.

Paragraphs 1.4, 5.5 and 6.3 states that no badger setts were present on site at the time of the survey, which was April 2023, and no evidence of badger otherwise using the site was recorded. It stated that no further badger surveys are required.

The submitted footage doesn't contradict that survey material in my opinion.

I can see that badgers receive legal protection under The Protection of Badgers Act 1992, and it is a criminal offence to interfere with a sett by damaging or destroying it, to obstruct access to, or any entrance to a badger sett, to disturb a badger when it is occupying a sett.

A badger sett is defined by the legislation as "any structure or place, which displays signs indicating current use by a Badger" and this is taken by Natural England to include any seasonally used setts.

As there are no setts on the development site, I am struggling to see how the submitted footage breaches The Protection of Badgers Act 1992.

In terms of Natural England's advice to understand the level of mitigation needed for a development proposal in terms of badgers, it says they could be affected if the development proposal causes:

-damage to setts
-loss of setts
-loss of foraging areas
-disturbance to badgers while they're occupying setts, from noise, lights, vibration, fires or chemical use.

Because there are no setts on the development site, the only potential impact that would require mitigation is the loss of foraging areas. The footage doesn't demonstrate that there is foraging habitat ***on site.*** The survey found no activity of badgers.

Looking at the Natural England advice, I can see that a developer may need to apply for a Wildlife licence before they start work if they:

-exclude a badger from a sett
-disturb a badger
-damage or remove a sett.

I cannot see how a Wildlife licence is needed due to the information submitted. If you think differently, can you give me more information as to what evidence we can base this on?

I'm very sympathetic to the neighbour's desire to protect wildlife, but if we refuse planning permission we will need to demonstrate demonstrable harm – i.e evidence as to why we think the site should not be developed – and given that we have specifically asked for surveys that didn't find anything, there is no evidence. Developers have a right of appeal against a reason for refusal, and costs can be awarded against Councils for refusing planning permission unreasonably. In an appeal situation an officer (or other expert witnesses such as yourself) could be cross-examined to test the evidence. An Inspector is very likely to listen sympathetically to a concerned neighbour, but would be less sympathetic to a Council refusing planning permission if they had no evidence.

Turning the advice in relation to the mitigation hierarchy, the standing advice states that where possible developments should avoid the effects on badgers. The evidence submitted doesn't suggest there is anything to avoid on site in terms of setts. Mitigation measures are suggested that include:

-design a layout that avoids isolating the badgers' territory (there is no evidence that there is any)
-avoid artificial lighting around setts (there are no setts on site)
-avoid disturbance, including noise and vibration near active setts (there are no setts on site)
-keep heavy machinery and excavation work away from setts (there are no setts on site)
-avoid activity between dust and dawn when badgers are most active (this could be controlled via condition)

Other mitigation that is mentioned is:

-maintain foraging and watering areas, or create new areas
-maintain habitat connectivity, for example, tunnels, underpasses or green corridors

The layout includes a 6m wide area that has to be kept free of any development including fences due to the need for the Internal Drainage Board to maintain the drain, which includes no fencing, or footpaths. This area can serve to preserve the habitat that is on site as it has to be kept free of development. On a site like this, if planning permission

were forthcoming, a Landscape and Ecological Management Plan would be required to ensure the 6m area is kept free of development.

It states where there is a loss of setts, the proposal could include creating artificial setts as a compensation measure. As stated, there are no setts to be compensated for. Therefore, this measure would not be reasonable to request over and above the other measures shown on the plans, which were requested as a result of concerns of other species on site raised by local residents.

Natural England specifically state on their website that they are a statutory consultee for proposals that affect sites of special scientific interest and other protected sites. It states "for all other proposals that might affect protect protected species, you should use the guidance on this page. Natural England will only provide advice if consulted on other cases in exceptional circumstances." However, I have asked my colleagues in the admin team to consult Natural England and I can forward you their reply.

I will also look to the other matters raised in your letter.

Maxine Simmons
South Holland District Council

6CONCOR

From: Beth Fox <bfox@lincstrust.co.uk>
Sent: 03 August 2023 14:43
To: Simmons, Maxine <Maxine.Simmons@sholland.gov.uk>
Subject: Planning application ref: H16-0136-23 - Ivanda Nursery

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Good afternoon Maxine,

I hope you're well?

I have been contacted by a member of the public, Peter Hunt, regarding the above application. I can see from the email chain he has forwarded me that he has sent you videos of badgers that I believe are adjacent to the proposed development site. In addition to this, he has sent over videos recording various other wildlife species as well as a list of birds seen by locals onsite. While I submitted comments on behalf of LWT yesterday, now that I have these videos I am increasingly concerned about the potential impact of this development. I hope that the concerns raised by Peter regarding the wildlife adjacent to the site are given due consideration, and that Natural England are consulted regarding the presence of badgers.

Kind regards,

Beth Fox (she/her)
Conservation Officer
Lincolnshire Wildlife Trust

Mobile: 07983 855472



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