

To the President of the European Parliament,
Luxembourg
L-2929, Luxembourg

Petition to European Commission by Deborah Porter on behalf of Radstock Action Group, 30th July 2008.

On behalf of Radstock Action Group, I petition the European Commission on the matter of a breach of the Habitats Directive in Radstock, Bath and North East Somerset, England.

We believe that Bath and North East Somerset Council has failed to abide by Article 12 of the Habitats Directive with regard to bats, in particular with regard to Greater Horseshoe bat and Brown Long-eared bat. We believe that the Council has permitted a development with the result that:

- a known resting place of Greater Horseshoe bat within the development site is to be lost to development without any replacement resting place being provided
- the development will have an adverse effect on connectivity with commuting and foraging routes connected to the roost to be lost and to what the developers presume to be (tentative identification of droppings) a second Greater Horseshoe bat roost adjacent to the development site
- there is to be a loss of use of the roost(s) by bats in the commuting route between two SACs (the Bath and Bradford on Avon SAC and the Mells Valley SAC), which is not mitigated by provision of a roost/roosts in the alternative on-site (mitigation) route
- the development has an adverse effect on a connecting route between the two SACs that looks to be the only connecting route between them, which will prevent its use as a connection; there is no evidence that that the planned alternative (mitigation) route is suitable as a replacement and it does not contain a roosting location for stopping off, which may on its own (due to the distance between the SACs) cause any use of the connecting route to cease, whatever the suitability of the alternative route
- there is to be a loss of a roost or roosts to Greater Horseshoe bats traveling to the site from local roosts
- the development will interrupt a commuting route within the feeding range of Greater Horseshoe bats from both the Bath and Bradford on Avon SAC and the Mells Valley SAC and fails to retain the value of the site to greater horseshoe bats as recommended by English Nature
- the development appears to interrupt a link between Greater Horseshoe bats in the Bath and Bradford-on-Avon SAC and the roost in the Ammerdown Ice House, a very important roost where bats from both SACs have been recorded; it may also interrupt the link between the SACs and the local roost at Camerton (linkage with the Camerton roost has not been investigated by radio-tracking)
- the development will cause disturbance to and the loss of important foraging resources for Brown Long-eared bats (which have a maternity roost adjacent to the site) which could lead to deterioration of the roost in the building adjacent to the site and constitute disturbance of the species in the Bristol Regional Environmental Records area, in which these bats are rare;
- the development will, due to light disturbance, cause loss of connectivity with both compensation areas for Brown Long-eared bats, routes that may be important for migration and for genetic exchange for this bat in the wider area, constituting disturbance to the species in the Bristol Regional Environmental Records area;
- there will be loss of forage for a range of bats, including the rare *Nathusius pipistrelle*, roosting locally, and the impact on this species and its conservation status has not been examined; there are only a handful (7?) of known roosts for *Nathusius pipistrelle* in the UK

These points are explored further in the Appendices:

Appendix A: The importance of the connecting route through Radstock Railway Land

Appendix B: The impact of the development on bats

Appendix C: Favourable Conservation Status

Appendix D: Comments on the 2006 bat report

With regard to the interruption of the commuting route between two SACs, there are three main elements. One is the physical interruption of the route through gaps in the scrub line on the route that runs down the

northeastern edge of the site, which may or may not be obstacles dependent on the individual bats in question and the subsequent management of the site. The second is the effect of light on the use of the connection between the SACs, as Greater Horseshoe bats are very light-sensitive. The third is the loss of a roost within that commuting corridor and the loss of connectivity to another roost/potential roost that may cause the loss of a vital stopping off point.

The permission has allowed site clearance works to take place, which has included the removal of a substantial amount of trees and scrub adjacent to the Kilmersdon Brook/Snails Brook link from the Wellow Brook that forms part of the commuting corridor between the SACs. The clearance works have not severed the route between SACs.

Acceptance of harm

The committee made their decision on the basis that they accepted the harm flagged up by opponents and in the known absence of the 2006 bat report and accurate mapping of off-site scrub clearance, which was deemed necessary to determine the impact upon bats by nature conservation organisations and the consultant ecologist brought in by the Local Planning Authority. The committee is considered in law to have accepted losses pointed out to it and to have determined that it did not need the bat report results, despite the contrary view of the consultant ecologist used for the application by the planning authority. The 2006 bat report was not made available to public scrutiny and only in the possession of the planning authority for a matter of days before the delegated decision was issued. The council's own ecologists were 'out of the loop'. The consultant ecologist has placed a report in the Delegated Report on the delegated decision on the outline application, having had access to the 2006 bat report. However, he appears not to have recognised key elements of the bat report of some significance that could have otherwise been raised by Cam Valley Wildlife Group or others (this is covered in Appendix D).

Derogation

We understand that member states are permitted to derogate from the provisions of Article 12 for certain purposes, provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.

The only purpose that would apply in this case is one of overriding public interest, but we believe that we can show that this is not the case. In addition, the local (Radstock) population has demonstrated its opposition to this development, including through voting in a Parish Poll and through the ballot box. We do not believe that it is the case that there is no satisfactory alternative or that the effects would not be detrimental to the maintenance of populations of the species concerned at favourable conservation status. The developers did not examine alternative uses of the site within their analysis, which runs contrary to IEEM guidelines. It is our understanding that most species of bat in the UK, including Greater Horseshoe Bat and Brown Long-eared bat, are not presently at favourable conservation status. We argue that the negative effects would be detrimental to maintenance of the present status of bats in the UK and to achieving favourable conservation status.

On the matter of derogation, the Delegated Report, issued at the time that the delegated decision to permit was taken, acknowledges that B&NES Local Plan policy on protected species has been contravened. However, although the Planning Statement of the ES recognises that a licence in respect of bats will be necessary, the B&NES Case Officer's recent opinion is that no licences will be required and that derogation criteria are, therefore, not applicable. This causes us some concern.

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Signed:

Radstock Action Group is a group of local people working to safeguard the unique character of, and for the positive and sustainable development of, the Town of *Radstock* in Somerset. Website:
www.radstockactiongroup.org.uk

Habitats Directive, Articles 12 and 16:

Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

The Council of the European Communities

Protection of species

Article 12

1 Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) in their natural range, prohibiting:

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- a. all forms of deliberate capture or killing of specimens of these species in the wild;
- b. deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;
- c. deliberate destruction or taking of eggs from the wild;
- d. deterioration or destruction of breeding sites or resting places.

Article 16

1 Provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, Member States may derogate from the provisions of Articles 12, 13, 14 and 15 (a) and (b):

- a. in the interest of protecting wild fauna and flora and conserving natural habitats;
- b. to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property;
- c. in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;
- d. for the purpose of research and education, of repopulating and re-introducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants;
- e. to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annex IV in limited numbers specified by the competent national authorities.