

Matter ID/7 1B  
Respondents 821 and 822  
Cam Valley Wildlife Group and Somer Valley Friends of the Earth

Matter 1B  
Appendix 4  
ID/7 1B\_Appendix\_supplementary

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Contents:

Supplementary paper sent to support Cam Valley Wildlife Group response to NPPF, not included in Schedule 2.

**B&NES Core Strategy Representation,  
Cam Valley Wildlife Group,  
October 2011, amended 23rd November 2011**



**Subject: National Planning Policy Framework -**

Supporting information for CVWG representation on the Core Strategy with reference to the NPPF, in particular CVWG representations regarding paragraphs 24, 167, 168 and 169 of the NPPF.

**Further ecological information**

Further ecological studies have been conducted regarding bat activity on the RAD 1 site. This new information has a bearing on the weight that can be given to the role of the RAD 1 site in promoting genetic exchange between two SACs, commuting between the SACs, and commuting from SACs to local roosts via the RAD1 site. Although the full report is not available, independent bat survey data and early 2011 survey reporting from the consultants used by the developers, published in an application to renew the outline permission, support the view of Natural England (email from Alison Howell to Debbie Bryce, in which she confirmed that it is assumed for the purposes of outline application matters that greater horseshoe bat is using this site to commute between SACs. Cam Valley Wildlife Group put forward the view previously that radio-tracking data from 2001 had established that greater horseshoe bat was travelling between SACs via the Radstock area and that, therefore, Chapter 4 should have been covered by the Habitats Regulation Assessment for the Draft Strategy. We note that the updated Sustainability Appraisal report of September 2011 continues not to include Chapter 4 in the assessment. A number of factors combine to suggest that it cannot simply be assumed that the HRA is inapplicable to Chapter 4 (see supplementary section on HRA below)

CVWG has argued that identification of housing allocations through the SHLAA was not properly conducted. We note that the Strategy still relies on the SHLAA in identifying strategic sites and their contribution to housing allocations, which is still an inadequate tool (see supplementary section on SHLAA section below). Sites should be re-assessed in the light of the NPPF and taking into account any new information available.

**Supplementary sections**

**1. Applicability of the HRA to Chapter 4**

It may normally reasonably be assumed that planning policies would protect against any adverse impact on the SACs that may arise as a result of development in the Somer Valley area and that, due to the distance from the SACs, that an impact would be unlikely to occur. However, we do not find comfort in any such assumptions in this case. This is due to the

nature of the proposed development of RAD 1 and the possibility that it hosts the only commuting route that adequately promotes genetic exchange between the two SAC populations concerned. The importance of this to the populations has not been established and it is feasible that this is one of the factors that influences failure of population recovery in England. These matters, in combination with what has every appearance of a determination on the part of the LPA to push this development through no matter what the actual consequences, suggests to us that there is a necessity to look into the possible and likely impacts on the SACs of this strategic development proposal through the HRA process, especially as it has been completely ignored in the site allocation process. Pertinent details are:

- the commuting route through the RAD 1 site is the only identified commuting route between the Bath & Bradford-on-Avon and the Mells Valle SACs for greater horseshoe bat; although it has been assumed that they could be travelling elsewhere through the landscape, an independent study points to reasons to doubt this and no study has shown where any alternative route lies/is used; the view that 'permeability' of the landscape may allow commuting has been put forward, but has neither been defined nor demonstrated; the faithfulness of this species to established routes and reluctance to bridge gaps, particularly where not dark or otherwise of particular habitat characteristics, also lends strength to the argument that the RAD 1 route may be the only route used
- the LPA's lighting engineers failed to identify a lighting scheme that would protect the commuting routes that have been identified through independent and developer surveys and the developers have not at any stage presented evidence that their lighting scheme would work
- that B&NES has given every appearance of intending to permit development notwithstanding barriers, through
  - statements regarding the necessity to deliver the proposed development
  - its previous rejection of the view of the Planning Inspectorate and misrepresentation to the Planning Committee of the view of the Inspectorate to facilitate the development;
  - the more recent attempt, using B&NES Highways powers, to secure permission for a major infrastructure change that is also part of the proposed renewal of the outline development proposals that was given permission as a detail of the outline consent; the attempt has been made on the basis, according to both B&NES Cabinet members and B&NES officers, that the outline permission is extant/live and that the infrastructure is necessary to deliver the NR2/RAD 1 development, despite
    - the outline being non-actionable and the renewal application not yet having

been heard

- the third phase of development not having been given full permission and entailing a potential need for a licence to harm a protected species at the point of permission (at which point we would expect it to fail the overriding public need test)
- it not yet having been demonstrated that the S 106 conditions on the outline consent could be met
- that any road provision by the LPA would negate the provision, by the developer, of such infrastructure as part of the benefits that outweighed the significant biodiversity and nature conservation losses according to the outline decision and the S 106 requirement that this be provided by the developer
- that the change to the original permission above and the suggestion by Linden Homes (new development partner of landowner) of further desired changes, should result in refusal to renew, in accordance with Government guidance on time extension applications (2010)
- site clearance, ahead of the Cabinet decision on the road orders (TROs), to make way for parking road construction vehicles, which included translocation of reptiles and removal of a UK BAP habitat component of known value to rare species on the assumption that the TROs would be permitted (a vigorous local campaign, threat of request to have the decision called in to the Secretary of State for Transport, and the last-minute opposition by Jacob Rees-Mogg MP appears to have prevented this)
- failure within the SHLAA to address nature conservation as part of the site allocation process, including the role of the RAD 1 site in commuting between SACs, commuting from SACs to local roosts via RAD1 and genetic exchange between populations in two SACs.

## **2. Identification of RAD 1 as a development site in the SHLAA**

### **Area and description:**

- described (incorrectly) in the B&NES Strategic Housing Land Availability Assessment as 4.8 hectares of former rail land adjacent to town centre plus site of former Council offices and former Wagon works
- Areas 1, 2 and 3 of the site comprise about 7.6 hectares and include greenfield land at Foxhills, a hillside that has not seen any former development, part of which is housing area within the proposals
- the larger 'redline' development area is over 8 hectares and includes the Victoria Hall

area and town centre highway infrastructure, to be delivered by the applicants with £150,000 B&NES contribution as a condition of consent

### **Planning consents**

- Outline planning permission was granted in March 2008 (06/02880/EOUT) for a mixed use development, which is described in the SHLAA as up to 210 residential units, retail and business floorspace, community uses and public open space, together with highway works within the town centre, which leaves out some elements
- The outline planning permission is more correctly described in the Linden Homes application for extension of the consent as:
  - 210 residential units of varying sizes, up to 695 sq m of retail business floor space (A1-A5 and B1); up to 325 sq m of B1 floor space or for community uses (D1) and conversion of the Brunel rail shed for D1 uses\*; car parking and new bus stops; partial diversion of Frome Road (A362) through the site, works to various existing roads within the town and establishment of new roads to service the development including new bridge structures; new public realm works, ground remediation, alterations to ground levels, works to trees and existing habitat areas, upgrading of below ground utilities; new children's play areas; establishment of new Sustrans route and diversion of existing public right of way.
- Area 1 Reserved matters approved in August 2009 (08/02332/RES) for residential development of 83 dwellings and commercial floor space for D1 use\* with retail and commercial floor space for A1-A5 and B1 use.
- Area 2 Reserved matters approved in August 2010 (10/00777/RES) for mixed use development of 56 residential dwellings and commercial floor space for retail/commercial A1-A5 and B1 use.
- The SHLAA says (incorrectly) that the Area 3 application is awaited for remaining 71 dwellings
- More correctly, the Area 3 development also includes the Brunel shed for D1 use and children's play area(s), but the Section 106 agreement makes it clear that use of the Brunel engine shed is subject to receipt by the Authority of a feasibility study into its future use and a refurbishment works programme [please note that the building is a known bat roost for greater horseshoe bat and as such would need to show that it was convertible to allow continued use or that there was funding for and space for an alternative building to be constructed - an alternative building would decrease the capacity for housing; loss of the roost or use of it would require a licence from Natural England, and for this the overriding public need test would need to be satisfied - it is doubtful that this development would pass, especially as Natural England has stated in writing that the site has been assumed for planning purposes to be part of a commuting route

between SACs. The developers' consultants have found greater horseshoe bat in 'commuting mode' near the Brunel shed this year; B&NES failed to take into account the potential need for a licence, which is arguably a point of law which it appeared not to satisfy - legal opinion from a barrister is that B&NES acted unlawfully in this respect

- There may have been an extant outline approval or permission in 1995, when it was a mixed development site in the Wansdyke Local Plan (Wansdyke preceded B&NES).
- There was a "minded to permit" decision on outline consent in 1999, subject to delivery of the agreed Ecological Mitigation and Compensation Strategy required in the draft Section 106 Heads of Terms.

\*B1 is office and light industrial, R & D, Laboratories, Studios; D1 uses are museums; libraries; art galleries, exhibition space; non-residential institutions, places of worship, medical/health centres, veterinary surgeries, dentists, educational facilities, creches, day centres, day nurseries, tourist advice and Citizens Advice Bureaux. The public parking was reduced to 5 or 6 (from 9) either side of the Brunel shed, to make way for additional retained heritage features as a condition of outline consent, and no additional staff slots have been provided. The B&NES parking requirements for medical/health/veterinary uses dictate that the parking level only allows for one consulting room, 1 medical staff member and 2 admin staff, which probably rules this use out.

### **Suitability for the proposed development**

- The SHLAA states, "Yes - as evidenced by the granting of outline planning permission" - B&NES has been saying that for many years
- The thinking in planning circles is that relatively small brownfield sites are relatively quick to deliver, not in the ten-year league even. The Ecological compensation offer in the 1999 application was larger than in the 2006 application. This site has already taken at least 16 years without delivery, suggesting that it is not suitable for this sort of development.
- The Planning Inspectorate's view, in its 2006 report, was in opposition to the SHLAA view, holding that the biodiversity value (and associated community value) was so high that it must be preserved, which would mean limited development of up to about 50 dwellings in the plan period; maybe more than 50 (achievability depending on the cost of contamination and safeguarding the wildlife/biodiversity value/habitats of importance); also leaving room for the possibility that it could accommodate less than 50 dwellings, or indeed none at all, on the basis that it had not been shown that the 1999 level of development (including 88 dwellings) could be achieved without unacceptable losses to biodiversity.
- The consultant ecologist brought in by B&NES for the outline planning application cited four paragraphs of PPS 9 which the proposal acted against and recommended refusal *"on ecological grounds and in line with PPS 9 Para 16: "Planning authorities should refuse permission where harm to the species or their habitats*

*would result unless the need for and benefits of the development clearly outweigh that harm” (Para 16)."*

- The areas of the site which are significant for nature conservation are not fully safeguarded in the permitted outline proposal, which goes against PPS9, all applicable B&NES Natural Environment policies and the recommendation of the Planning Inspectorate - *"Until it can be demonstrated that those areas of the site which are of significance for nature conservation can be fully safeguarded I consider that it would be inappropriate to increase its capacity for residential development above that proposed in the 1999 scheme, on which the ecological issues were unresolved...I fully accept the importance of this site to the regeneration of Norton-Radstock. However, the maintenance of large parts of the site as a nature reserve can also be of value to the community. The 1999 report from Wessex Ecological Consultancy identified three areas which could be developed without significant biodiversity losses given appropriate management of the rest of the site. I am therefore confident that some development could take place within the site whilst conserving its ecological importance, but it needs to be demonstrated that the development is confined to areas which are not of significant value...The NR Regeneration Company now has a developer partner ready to work on an appropriate scheme, and I see no reason why some development should not take place during this plan period. However, to avoid pressure for the achievement of high numbers of dwellings at the expense of the ecology of the site, I recommend that the site be expected to accommodate no more than 50 dwellings during the plan period. Any higher number of dwellings which may be achieved would count towards the supply of housing land beyond the plan period"* - excerpts from the Inspector's report 2006, Chapter 7. The 1999 application included 88 dwellings and the ecological issues were not resolved, arguably leading to failure to agree a S 106 agreement and the application being timed out.
- the developers say that their development will not regenerate the town or the area, but that it will act as a catalyst for regeneration, which will occur on the back of the provision of transport and built infrastructure (urban block), roll-over money to be ploughed into other developments, and the apparent diversification of job offer (this appears to be office and retail, which we already have in the locale); Cherry Beath, B&NES Cabinet Member for Sustainability, has said that these other developments are unlikely to happen. It would appear that the likelihood of there being roll-over money is very slim, especially given that there now appears to be a £2.1 million reduction on the previous level of public funding on offer to Bellway Homes/NRR through the Kickstart 2 programme, and in the light of the substantially reduced offer that was presented to Bellway/NRR after the Government spending cuts that saw the HCA's funding slashed by £5 million. Bellway walked away, for it's opinion was that there would not be sufficient public money available in the changed economic climate to allow delivery of the project.

- Alternative uses of the site were not considered at outline. Rail was ruled out as not feasible and only the "Do-nothing" scenario was considered - this was entirely unrealistic, as pointed out by the B&NES Ecological Consultant in the Officers Report, and against the IEEM guidelines regarding socio-economic analysis.

### **Highways**

- The SHLAA refers the reader to highways comments as per consented planning application ref: 06/02880/EOUT.
- There is presently a petition with about 1500 signatures (and rising) against the road proposals; the Town traders are largely against the proposal on economic grounds and supportive of the petition; road hauliers, coach companies and a bus company are against them as extremely problematic to unworkable, and unsafe; the Post Office sorting Office staff believe that the road proposals will force the office to move, with the loss of 60 or so jobs - this more than offsets the 43 long-term jobs that the development proposals claim will result from their development going in.
- The proposals appear to conflict with DfT guidance on roads and roundabouts and specific guidance on mini-roundabouts in terms of safety and operational matters

### **Availability**

- The SHLAA says that the site is in single ownership
- the socio-economic and socio-environmental case for alternative uses of the site have not been investigated and there has been a town planning based view on the use of this site for a long time now; the LPA is so interested in built development of this site that it funded the Norton Radstock Regeneration Company (NRR), gave land for £1.00 and entered into financial claw-back arrangements. Council papers have NRR as the chosen delivery vehicle for this former B&NES Major Project and the preferred development partner for B&NES landholdings; B&NES appears to have significant interests in the availability of this land for development

### **Achievability**

- The SHLAA says:
  - Mostly within the next 5 years
  - Actions to overcome constraints
  - The carrying out of major highway works within the town centre in order to facilitate access to the site is a requirement of the outline planning permission.
  - Decontamination of the site is a requirement of the planning permission.
  - Ecological mitigation and compensation is a requirement of the planning permission.
- The last SHLAA was probably equally optimistic about delivery time
- There is still no evidence to suggest that the constraints can be overcome, most



notably decontamination and the need to provide dark bat commuting corridors for very light-sensitive species, including greater horseshoe bat; the ecological constraints regarding invertebrates were not overcome; the firming up of the definition of UK BAP Priority Habitat, Open Mosaic on Previously Developed Land, has changed things - now almost all, or all, of the site other than the Foxhills field is UK Priority Habitat (this has been mapped out, but the mapping is a little too conservative, so it may be a bit more extensive than the mapping)

- B&NES and the HCA are now proposing to put in and pay for the road infrastructure, which would not allow compliance with the existing Section 106 agreement with the outline planning permission which the applicants seek to extend - it would appear that they could not extend it in this case, as it has to be an extension application for the same development considered as if it were a new one under the relevant Government regulations
- B&NES fails to address the flaws of the outline application and the accompanying Regeneration Case document, which does not hold water; even the costings in this document are extremely difficult to reconcile with the much higher costings now for a significantly smaller infrastructure package
- B&NES does not address here the changes to national planning policy since approval and permission, most notably climate change policy, which includes biodiversity quite a number of times now, strengthening the case for its importance.
- The ecological mitigation and compensation package is not full mitigation and compensation, as would accord with B&NES natural environment policy and national policy; it fails to uphold these policies and there are significant biodiversity losses in national, regional and local contexts; in the words of Mike Lush, respected consultant entomologist and ecologist who gave his assistance, *pro bono*, "*should [the site] be allowed to be destroyed, as this development would certainly result in, it would be a national travesty*" and the off-site compensation "*would not even come close to compensating for the loss of habitat*"; the delegated report set out the list of B&NES natural environment policies with which the proposal does not comply.
- The achievability of alternative uses has never been examined, and the constant fire-fighting by members of the community with an interest in alternative uses has effectively prevented them devoting their time to bringing forward costed alternatives.

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