

17 Hollickwood Avenue
Friern Barnet
London N12 0LS
Tel: 020 8361 2496
e-mail: ollie.natelson@talktalk.net

Litha Efthymiou
Programme Officer
6th Floor River Park House
225 High Road
N22 8HQ
Tel: 020 8489 2741
Email: programmeofficer@haringey.gov.uk

8th February 2012

Dear Ms Efthymiou,

Haringey Borough Council
Core Strategy Examination Hearing Session 8 – 22 February 2012

I wish to submit the attached document (below) for the above hearing and wish to attend to represent the views within this attached document.

It appears that the LB Haringey has failed to consider the legal protection of European Protected Species of wildlife that are present on the Application Site.

Hence, without taking into account these legal restrictions, LB Haringey may have inadvertently produced a CS that is insufficiently robust to withstand legal challenge to any development proposals for the Application Site.

I shall be most grateful if you will accept this document and permit me to attend the hearing.

Yours Sincerely,

Dr S. Oliver Natelson

(Please scroll down this page for the document)

Haringey Borough Council
Core Strategy Examination Hearing Session
8 – 22 February 2012

**Examination of some statements made
by
L B Haringey about the wildlife value of
The Former Friern Barnet Sewage Works
(The Application site)**

by

S. Oliver Natelson B. Pharm.,, Ph D., PGCE

8th February 2012

Dr S. Oliver Natelson
17 Hollickwood Avenue
Friern Barnet
London N12 0LS
Tel: 020 8361 2496
e-mail: ollie.natelson@talktalk.net

Should the CS include specific recognition of the site's nature conservation value, for example 'subject to no adverse effect on the nature conservation value of the site'?

Is the designation consistent with the Council's Community Strategy and Biodiversity Action Plan?

(point xvii of the Agenda items for discussion in the above document)

1.0 Disparaging Descriptions of the Application site

The L B Haringey variously described the Application site in the following terms

- The site is dangerous
- The site is impenetrably overgrown
- The ground is contaminated
- It is a Brown field site (presumably implying that it can't be good for wildlife)
The first of 32 references to the Brownfield site designation is 83/6/5.1
(Reference: LB Haringey Summary of Representations)

1.1 Now the Application site with all these descriptions has an exact mirror of itself - on the other side of the A 406 North Circular road is the former Finchley sewage works site, now the Glebelands and Coppetts Wood Local Nature Reserve.

2.0 Comparing the Glebelands & Coppetts Wood LNR with the Application site

2.1 All the disparaging features given in 1.0 above levelled by LB Haringey at the Application site are also true of the Coppetts Wood site which is treasured by LB Barnet as one of the top ten Local Nature Reserves.

If we compare the two sites – we see a remarkable similarity in their historical usage, their structure, composition and wildlife.

2.2 Yet one site is regarded by LB Haringey as a Brownfield site – fit only for Industrial use, whilst the other site – an almost exact replica is officially one of the top ten designated LNRs (Local Nature Reserves) in the London Borough of Barnet – an outer London borough with hundreds of acres of designated Green Belt land.

2.3 Yet the Coppetts Wood site is more highly regarded for wildlife than the majority of pristine Green Belt sites
because it was a sewage works site,
because it was a landfill site and
because it is a Brownfield site,

2.4 A comparison of the two sites
Please see the table 1 on the following page:

Table 1 A comparison between
The Application site and the Glebelands and Coppetts Wood LNR

Comparison	Former Friern Barnet Sewage Works site	Former Finchley Sewage Works site
Duration as a Sewage Works site	1880s – 1963	1880s – 1963
After Sewage works were abandoned, the subsequent usage	Used as landfill of rubble, old vehicles, asphalt and clay but incompletely capped.	Used as landfill of rubble, old vehicles, asphalt, clinker, broken glass and asbestos sheet. Then incompletely capped
Were dangerous items left on the surface?	Yes – as at the Coppetts Wood site	Yes - piles of lamp posts, burnt-out cars and motorbikes. Asbestos cement sheets Only cars have been removed.
Are other dangerous items present?	Steep slopes, old cars and lamp posts	Steep slopes, motorbikes, lamp posts, surface asbestos sheets, broken glass, inspection wells without lids.
Ground toxicity	Analysis of borehole samples revealed the same type of contaminated ground as at Coppetts Wood site	Analysis of borehole samples revealed the presence of high levels of toxic heavy metals, Polycyclic Aromatic Hydrocarbons etc
The basis of biodiversity on the site	Very Similar to the Coppetts Wood site. There are damp areas supporting Willow, areas of Sycamore and Ash trees, areas of Hawthorns, of Cherry Plum, of Poplar, of Russian Comfrey etc. A mosaic of landfill generated a mosaic of habitats as at the Coppetts Wood LNR	Landfill and cover produced ground of localised differences in acidity, water-retention and nutrients (from sewage works). This produced a mosaic of habitats yielding a huge diversity of plant and insect life.
Public experiences	The public has visited this site occasionally before fencing enclosed the site. It is very apparent that there is a great public demand for this site to become a publicly-accessible nature reserve. Indeed some have wanted it to become like that at Coppetts Wood.	The public rarely visited the fence-enclosed site until LB Barnet opened it as a public Nature Reserve in ca January 1985 . Now, despite its hazards, it is immensely popular - with well-attended guided nature walks, bat tours and an annual festival for the entire family.

2.5 It is quite clear that both sites have had the same history as sewage works, landill that was incompletely covered, both are contaminated, and both sites have dangerous areas.

2.6 However, although both sites are much loved by the public for their wilderness trails, the wonderful wildlife, only has the Coppetts Wood site been developed into a nature reserve and in 1999 was designated as a “Local Nature Reserve” by the L B Barnet, with support from Natural England.

2.7 Whereas the Pinkham Way site was abandoned and not so converted, as LB Haringey sought to make money by developing it – instead of treasuring its wildlife.

2.8 The Coppetts Wood site is very much loved by the public which visits the site mostly during the blackberry-picking season, but may be seen every day – at all times by visiting dog-walkers, by those seeking wonder in Nature, by people taking short-cuts, during all hours – even at night.

2.9 Haringey could do so much to enrich the lives of its residents by converting this site into a nature reserve and we are ready and willing to help Haringey to achieve this for its residents.

3.0 The presence of EPS (European Protected Species) on The Application Site

3.1 All of the UK's bat species are EPS. They are protected by European Convention and Directives on wildlife. These Conventions and Directives have been transposed into UK laws which are mainly:

(1) The Wildlife and Countryside Act (as amended by the Countryside and Rights of Way Act) 1981.

(2) The Conservation of Habitats and Species Regulations 2010

3.2 The presence of seven species of bats have been recorded at or less than 1.1 km north-west of this site (Coppetts Wood Conservationists records Reference 1). Other sources acknowledge the presence of these bats (References 2, 3)

Some of these bat colonies may come to the Application Site and forage on insects feeding on the lush vegetation in this low-lying damp area.

3.3 Records of bats on / close to The Application site

- (a) Bats were recorded commuting and feeding on the eastern and central parts of the Application site. (Reference 3)
- (b) Close to the Application site bats in considerably larger numbers were feeding above the pond in Hollickwood Park (Reference 4)
- (c) A survey by residents was conducted, they visited the site just once and despite the inclement weather for bats (the wind was gusting) they recorded 10 bat passes in a survey lasting 2 hours 07 mins. They were recorded commuting and feeding over the eastern and central areas of the site.
- (d) Furthermore on two visits to Hollickwood Park residents recorded that bats feeding over the pond area were so numerous as to be continuous for at least half an hour on both occasions. Their echolocation calls were too frequent and overlapping for us to be able to count the numbers of bats.(Reference 4)

3.4 It is clear that this site is well used by bats.

Bats may be roosting here – or travelling here from roosts outside The Application Site. However, it appears that LB Haringey has not conducted any surveys of the highly protected species.

3.5 Do Bats roost on The Application site?

- (a) The roosts may be maternity roosts and possibly hibernating roosts within the trees having large girth.
- (b) Furthermore, there are possible roosting sites within the hollow lamp-posts and car bodies within the Application area.
- (c) Both bats and their resting places (or roosts) are strongly protected by law (References 5, 6).

3.6 Surveys for bats and their roosts are urgently needed.

- (a) Without adequate surveys for bats, it would be unlawful for any person to undertake any of the activities given in section 3.7.
- (b) Without adequate information, it may be unlawful for any development of the site to take place.

4.0 What is the legal protection afforded to bats and their roosts?

4.1 Bats have been designated European Protected Species (EPS).

- Their resting places (roosts) are also protected – even when not occupied
- They must not be so disturbed as to exert a negative impact on the numbers and distribution of local bat colonies. This includes bats that roost outside the Application site and commute here to feed.

4.2 Under the Conservation of Habitats and Species Regulations 2010,

It is unlawful for any person

- (a) To deliberately injure or kill any bats,
- (b) To deliberately disturb bats
- (c) To damage or destroy a bat breeding site or resting place

[Commonly bats in trees – but could be within any hollow structure eg an old car, a hollow lamp post – of which there are many on site].

It is unlawful to cause any disturbance to bats which is likely

- (a) To impair their ability
 - (i) to survive, to breed or reproduce, or to rear or nurture their young, or
 - (ii) to hibernate
- or
- (b) to affect significantly their local distribution or abundance.

(See References 5 and 6 below)

4.3 Until proven to the contrary, all potential roosts are protected – even though they may be unoccupied

This includes all items that have potential for bat roosting sites - are protected against damage or destruction. This includes all mature trees, all hollow objects – eg car bodies, in the hollows of dumped lamp posts etc

4.4 Important commuting sites may be legally protected – eg lines of trees are used as commuting routes by local Pipistrelle bats to foraging areas.

4.4 Important foraging sites are likely to be protected against destruction.
This may include the pond in Hollickwood Park

Protection may extend to certain areas of insect-rich vegetation which may be a valuable feeding site for bats.

5.0 Duties of the Local Planning Authority

5.1 The London Borough of Haringey has a legal duty to uphold the Habitats Directive (Reference 6.)

5.2 The relevant legislation is contained under the Conservation of Habitats and Species Regulations (Reference 6 below),

5.3 Under these regulations, The London Borough of Haringey is identified in law as the Appropriate Authority. (Paragraph 7 (2) (3) (4))

5.4 Accordingly, L B Haringey is under a legal obligation to comply with the Habitats Directive [of the European Union] (Paragraph 9 (1))

The relevant section in The Habitats Directive is Article 16 in which certain duties are placed on a Local Planning Authority such as L B Haringey.

5.5 Unfortunately, there appears to be no reference by LB Haringey to the protection of bats, their roosts or to their colonies.

There appears to be no reference by LB Haringey to its legal obligations under the Habitats Directive. This is a serious legal omission that needs to be rectified if LB Haringey wishes to pursue any form of development on The Application Site.

6.0 What should LB Haringey have done to comply with wildlife legislation?

6.1 LB Haringey should have sought compliance with Article 16 of the European Union's Habitats Directive.

6.2 LB Haringey ought to have considered the legal challenge that was well-documented, it centred on the fact that another LPA had ignored the Habitats Directive and the judge pointed out three essential "derogation tests" that the LPA ought to have applied and failed to do so – as L B Haringey has done.

6.3 Please consider the following case:

In a judgement in the High Court in June 2009 the case was presented of *R (on the application of Simon Woolley) v Cheshire East Borough Council*.

The judgment clarified the legal duty of a Local Planning Authority ("LPA") when determining a planning application for a development which may have an impact on European Protected Species ("EPS"), such as bats.

The species protection provisions of the **Habitats Directive**, as implemented by the Conservation (Natural Habitats Etc.) Regulations 1994, contain three "derogation tests"

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.

This court judgment makes it clear that the LPA must also address its mind to these three tests when deciding whether to grant planning permission for a development which could harm an EPS. (See Reference 7 below)

6.3 Clearly LB Haringey has failed to consider applying these three “derogation tests” and therefore this LPA is lawfully unable to even consider giving permission for the Application site to be developed until adequate tests have been conducted to protect EPS and their resting sites, breeding sites, commuting routes and foraging areas.

These legal restrictions ought to have been presented in the Core Strategy

(See Reference 7 for details of this legal case)

Bibliography

Reference 1

Glebelands and Coppetts Wood Local Nature Reserve,
Wildlife Records 2012

Coppetts Wood Conservationists
17 Hollickwood Avenue, London N12 0LS
Tel: 020 8361 2496
e-mail: ollie.natelson@talktalk.net

Reference 2

Bats

The entire site has the potential to provide good foraging habitat for bats, as well as potential roosting opportunities within mature trees. In particular, mature trees (of which there are many around the perimeter of the site) and those further from the dual carriageway may be favourable. Due to the obvious lack of management in the last few decades, many of these trees have become decayed and branches have fallen off leaving open wounds, splits and cracks. All of these features may be utilised by roosting bats."

Source:

Desk Study reported on Page 11

Title Extended Phase I Habitat Survey & Desk Study

Prepared by: Jacobs UK Ltd

Project Number: B0878400

Date: March 2008

Client: London Borough of Barnet

Reference 3

Former Friern Barnet Sewage Works

Bat Surveys by Jacobs UK Ltd

June 2009

My Summary

The authors confirmed the presence of seven species of bats all within 1.1 km of the application site (Table 1 page 1-1).

It was recommended that 19 out of 22 of peripherally-sited trees had potential for roosting bats.

However, mature trees in the centre of the site were not examined for bat roosting potential.

Only limited surveys for bats were carried out in the central and western regions.

No surveys were carried out over the pond in Hollickwood Park.

Reference 4

Our group visited that pond on two occasions and on both occasions a considerable number of bats were recorded feeding on insects above the water. We also recorded bats commuting and feeding in the eastern and central areas of the Application site

Reference 5

(1) The Wildlife and Countryside (as amended) Act 1981

The Wildlife and Countryside Act 1981

All species of bats are listed on Schedule 5 of the 1981 Act, and are therefore subject to the provisions of Section 9, which make it an offence to:

- Intentionally kill, injure or take a bat [Section 9(1)]
- Possess or control any live or dead specimen or anything derived from a bat [S 9(2)]
- Intentionally or recklessly damage, destroy or obstruct access to any structure or place used for shelter or protection by a bat [S 9(4)(a)]
- Intentionally or recklessly disturb a bat while it is occupying a structure or place which it uses for that purpose [S 9(4)(b)]

Information Source:

Bat Mitigation Guidelines, English Nature January 2004

Reference 6

The Conservation of Habitats and Species Regulations 2010

Summary Extract

[The following is a verbatim extract from the original document.

Nothing has been changed. Oliver Natelson]

My comments are in *[italics in square brackets]*

Competent authorities

Paragraph 7

(1) For the purposes of these Regulations, “competent authority” includes

(a), public body of any description or person holding a public office;

(3) In paragraph (1)—

(a) “public body” includes any local authority,

(4) In paragraph (3)(a)—

“local authority” means

(a) in relation to England, a London borough council,

Exercise of functions in accordance with the Habitats Directive

Paragraph 9.

(1) The appropriate authority and the nature conservation bodies must exercise their functions under the enactments relating to nature conservation so as to secure compliance with the requirements of the Habitats Directive.

(2) Paragraph (1) applies, in particular, to functions under the following enactments—
(c) Part 1 (wildlife) of the WCA 1981
(f) these Regulations.

My comments

[paragraph 9 (1) and 9 (2) (c) and (f) means that the Local Council must use its powers – eg either to refuse planning permission - or - if approves of the plan to put in planning conditions to ensure that the Habitats Directive is not contravened by – for example a developer.

PART 3

PROTECTION OF SPECIES

Protection of animals

European protected species of animals

Paragraph 40.—

(1) Schedule 2 (European protected species of animals) lists those species of animals listed in Annex IV(a) to the Habitats Directive which have a natural range which includes any area in Great Britain.

(2) References in this Part to a “European protected species” of animal are to any of those species.

Protection of certain wild animals: offences

Paragraph 41.—

(1) A person who—

- (a) deliberately captures, injures or kills any wild animal of a European protected species,
 - (b) deliberately disturbs wild animals of any such species,
 - (c) deliberately takes or destroys the eggs of such an animal, or
 - (d) damages or destroys a breeding site or resting place of such an animal,
- is guilty of an offence.

(2) For the purposes of paragraph (1)(b), disturbance of animals includes in particular any disturbance which is likely—

(a) to impair their ability—

- (i) to survive, to breed or reproduce, or to rear or nurture their young, or
 - (ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate;
- or

(b) to affect significantly the local distribution or abundance of the species to which they belong.

[My comments]

[The Local Planning Authority can refuse planning permission – on the grounds that the planning application would result in the contravention of the above regulations that are designed to protect the stated animals – in this case bats.

Or

The Local Planning Authority could grant planning permission, but insisting on planning conditions that restrict the development in order to protect the EPS from “disturbance” as defined in the above regulations.

[Whether or not the LPA grants planning permission – the EPS must be protected].

Reference 7

Duty of a Local Planning Authority – a “Copy and Paste” extract.

An important judgment was handed down by His Honour Judge Waksman QC sitting as a judge of the High Court at the start of June 2009 in the case of *R (on the application of Simon Woolley) v Cheshire East Borough Council*.

The judgment clarifies the legal duty of a Local Planning Authority (“LPA”) when determining a planning application for a development which may have an impact on European Protected Species (“EPS”), such as bats,

The species protection provisions of the **Habitats Directive**, contain three “derogation tests”.

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.**

This court judgment in *Woolley* makes it clear that, the LPA must address its mind to these three tests when deciding whether to grant planning permission for a development which could harm an EPS.

A LPA failing to do so would be in breach of Regulation 3(4) of the 1994 Regulations which requires all public bodies to have regard to the requirements of the Habitats Directive in the exercise of their functions.
