

Day Sixteen

Michael Woods

Examination in Chief

Mr Woods was asked to read his summary proof. His main points were:

- A number of surveys of questionable accuracy were carried out
- NPA dismissed Penny Lewns' findings as the 'last throes of a now extinct population'
- Nest found in January 2007. Incontrovertible evidence of dormice population, whose habitat would be fragmented by the road.
- The proposed mitigation is inadequate.
- The Green Bridge is around 800m away from the site where the dormice population was discovered.
- The impact on dormice will not be 'slight adverse', but 'very large adverse'.

Mr Woods read from his rebuttal proof.

Para 1-4. Hazel is not essential for dormice. RPS do not understand why dormice use nest tubes. Little incentive to use. Tubes work best in shrubs and thin hedgerows. RPS acknowledge that June is not an ideal find for Hazel searches.

Para 8. Dormice in woodland area likely to inhabit tree canopy, not use nest tubes. Nest boxes more appropriate

Para 12. May have been inconsistencies in Nest Tube 90, but no doubt that was used by dormice.

Para 16. Not the case that dormice will use mitigation measures.

Para 17. Dr Jones in favour of net tubes

Para 18. No evidence of dormice using this bridge, net tubes will be no better for dormice than aerial walkways. Only proven methods should be used. This is no case for experimentation.

Withdrawal of Natural England's objection.

-If NE were under the impression that this was the last throes of an extinct population and were unaware of the regional importance of the pop then they would be very unlikely to object. However believe we have a sustainable population of regional importance.

WWT continue to object in principle, but have withdrawn objection in respect of mitigation

-Methods completely unproven

Sustainable population. Favourable Conservation Status.

-Don't know if population is of FCS because proper surveys have not been done.

Map, extract from DCH.

-White spot approximate Westbury location, sparsity of dormice around the area.

The black spots are records of dormice, not necessarily in habitats of sufficient size. Many in woodlands of less than 20 hectares. Westbury population has added importance.

Cross Examination

Map extract. Is original in black and white?

-In various colours of red.

Slightly darker colour in south of England. Darker shows widespread population?

-As widespread as dormice can be – only 40,000 in whole country.

Number of dots shown not the only indication for how should be using map?

-Correct

Map can be used to predict the likelihood of population

-Correct

Were there any black dots under Westbury?

-No

Therefore map wouldn't have been much use in finding dormice in this area?

-The fact that it is a darker shading should have been an indication

In context of small isolated populations, can we make use of indication in map?

-In that they are isolated.

Not a member of WHA?

-No

When were instructed to appear at inquiry?

-Not sure, before this year

Visited site in Jan 2007. How did that visit come about?

-Invited to look by local residents

What other visits have made?

-One other visit, sometime in the last three months

Have not carried out surveys?

-No

Relying on information from Penny Lewns and WCC?

-And dormouse nest that found myself.

Appendix B of Jones response. Extract from Badger consultancy report, March 2007. Pg3, Map 2, Dormouse Survey Results. In terms of actual record, we have dormouse nest 2007, dormouse nest 2004, and dormouse chewed hazelnuts 2003-2004.

-Agreed

The finds are therefore all to the east of the proposed bypass?

-Agreed

RP para 12. There may have been inconsistencies in mapping location. Who is being inconsistent?

-Not saying either side

-Commenting on Dr Jones' statement

Nesting tube 90. Evidence impossible to fabricate. Have photo of nest tube?

-Yes, will send to inquiry.

RP16. Dr Jones not standing alone in holding that view is he? Natural England?

-Explained why Natural England have taken that view

Aware of WWT view and County Ecologist view?

-Yes

Dr Jones has taken a different view from yourself, supported by NE.

-The support of NE based on false premise.

Have asked them about their view?

-Not yet

Intending to ask them?

-Could do quite easily

-Survey work needs to be carried out first.

RP 18. When bridge put in place?

-Two years

Has been monitored constantly?

-No

Monitoring still going on?

-Yes

Vitally important that only proven methods of mitigation used in this circumstance. On the basis of the finds that we know about, are assuming fragmentation?

-General acceptance and assumption from NE

Assuming fragmentation?

-Agreed, assuming fragmentation to the north.

Have you examined connectivity through hedgerow?

-As far as I can, yes.

Fragmentation could lead to extinction of population. Would depend on examination of circumstances. One of those circumstances in existing connectivity?

-Agreed

Only proven methods should be used. No requirement for only proven methods to be used?

-Unless use proven methods, not putting in place mitigation.

If only proven methods can be used, then we stand still in terms of knowledge.

-Should not experiment with such at risk population.

-Should not use in real situations, where if the experiment fails the population will be fragmented.

State that no evidence that dormice use wood near Chalford Green Bridge. This mitigation highly unlikely to be useful. Taking into account evidence that is available of existence of dormice at given location?

-Yes

No evidence of dormice at Beres Mere farm?

-No, have not looked in the right places.

No evidence at present of dormice west of route of bypass?

-Agreed

RP20. Refer to importance of dormice population. At least 18 hectares In original proof, Para 16, refer to 20 hectares being necessary, say area is about 20 hectare. Any further survey work?

-Re-measured map more carefully.

Include hedgerows and scrub in main proof, exclude in supplementary.
-In addition to measuring map, have looked at photographs.

Nowhere in evidence do you state where 20 hectares is?
-No

WCC106. Pg 1, Existing potential for dormouse movement. Green areas show woodland and hedgerows in block form. The 20 hectares necessary, covers what area as shown on diagram?

-Woodland to S, Woodland to N, together with connecting hedgerow and scrub and scrub to SW.

Response says you exclude shrub and hedgerow?

-In that case would be woodland areas only and connection in between, including Beres Mere farm.

Don't include hedgerows?

-Didn't exclude as habitat, excluded from calculations.

RP pg10. Refer to 20 hectare Westbury site. Gone from 18, to something closer to 20, now 20.

-Agreed

That site does not include hedgerow where two nests were found?

-That has nothing to do with the area.

Refer to permanently secure population. Based on survey information?

-Based on what is in DCH, which is that dormice need 20 hectares or more.

Refer to 20 hectare Westbury site, with its permanently secure population.

Suggesting that there is a permanently secure population?

-According to DCH there should be.

-Would find out if there was proper survey work.

Are you saying that you believe there is a permanently secure population, or that the site is large enough for a permanently secure population?

-Believe there is permanently secure.

Main proof para 16. Refer to 'promising for future'. Difference in evidence?

-Yes

-Not significant difference, gave further consideration.

No more information was available?

-Just a reassessment.

In response proof, it is referred to as a regionally important site?

-Agreed

Moved from 'potential' to regionally important site?

-Made point in main proof that population was regionally important.

Making fundamentally different points?

-Yes, but based on further research

Explanation for change is examination of DCH, which indicates that there are few records on Wilts?

-Also reconsideration on my part

No further information on fragmentation

-No

No further information on nature or size of population?

-No

-Waking up in the middle of the night and realising importance of population.

Main proof, para18. Refer to pg51 of DCH. Made WCC107. Handbook doesn't only make reference to ropes?

-No

Co-author of book?

-No

WCC107 5.7.5. Dormice bridge and tunnels. Taken quote from this section.

-Agreed

Handbook intended to provide guidance?

-Intended to give people ideas of how to get dormice across roads.

Dormice reluctant to cross open ground?

-Generally speaking

Open ground is ground that doesn't have cover?

-And has wide enough gap that cannot see other side.

-Dormice do cross gaps in hedgerows

At what sort of level?

-Do not have data.

Presumably will cross gaps in hedgerows if assisted by other measures?

-Don't have the evidence to support that.

Guidance says likely that short bridges more likely to use, attempting to bridge gaps of more than 100m ineffective. Not view that limited to 5-10 metres?

-Not limited to any length. Saying that 'more likely to be used', intuitive suggestion.

-No evidence

Dormice moving around at night, don't require light?

-Require some light, cannot see in pitch darkness.

Any reason why dormice could not move through 4x4m box underpass?

-Because they don't run along things in the hope there is something favourable on the other side.

When it comes to crossing gap, they would have to know there is something on the other side?

-A lot of the time there is vegetation on the ground that they can move through.

-Lack of evidence.

Dormouse bridge in Japan. Substantial structure.

-Agreed

Guidance states bridge used within a year by dormice. Indicates possibility of use?

-Yes

-Not as mitigation, as an experiment.

Not starting from a nil pool of knowledge.

-Completely different species of dormice, not covered by same protection laws.

We don't know if this was an experiment. We know that this sort of structure was successful.

-The tubes were successful in getting grey squirrels across.

Not interested in grey squirrels-

-Not interested in Japanese dormice.

Why is it in guidance if not useful?

-One of the authors was keen to encourage experiments, but not in such a sensitive location.

Nowhere in guidance would it appear to be dismissing out of hand a form of mitigation which is not proven to be successful.

-Neither is it saying that 'these are the sorts of things that should be used to get dormice across roads'.

You are arguing that until a method is proven to be successful, you are not willing to entertain it as possibility?

- Not in an area where the population would be put at threat if method failed.
- Cannot legitimately use an unproven method and state that have linked both sides of the road.

WCC 106. Reference to existing and future position. Have you walked all the hedgerows?

- Haven't walked some

Bere's Mere. Thin hedgerow. Gappy. Attractiveness of the hedgerow will be affected by this.

- Yes

Are you able to agree the accuracy of the information?

- No

Are you able to agree any of the information in this map?

- No

Potential for movement in the scheme. Are you in a position to disagree with the information in this plan?

- Red line lacking – the road. No proof that animals would cross road.

At location of underpasses there are existing gaps with no connectivity. A different kind of gap provided.

- Two different kinds of gaps – man made underpass, natural vegetation.
- Dormice would cross small natural gaps, no proof would cross underneath roads.

Area of woodland near Newtown green bridge suitable for dormice?

- Not aware.

Planting. Response Proof 21. Unlikely to be of value for 7-8 years. What allowance are you making for plants that will be semi-mature or mature?

- Cannot recall nature of planting.
- Believe planting thick vegetation for hedgerows. Don't know of any proof that this will work.

Your point is that should ignore roadside planting because it will take 7-8 years to be of value.

- Agreed

Make that comment without any investigation.

- Scheme proposed planting of tall trees close to underpasses.

These wouldn't take 7-8 years?

-Would not be of benefit.

Able to describe nature of planting?

-No

Gaps in existing hedgerow. If these gaps were to be planted up the same criticism could be made?

-Totally different things in that dormice already use hedgerows.

Cannot make comment that planting will be ineffective without being aware of details?

-Not aware of evidence that dormice would use sort of planting.

Response Proof Para 7. Refer to survey score only 16.3, taken from ES Vol 4 Pt 2. Appendix 9.12, S.3. Indicating adequate survey effort given constraints. S.6 gives figure of 77.7. Comment relates only 16.3 and not other scores.

-Correct

-Can put any number of tubes in woodland, but would not find dormice as they would be in canopy.

Refer to minimum score of 20 being necessary. WCC 108. Table 6. Mathematical exercise based on certain factors?

-Agreed

Document states that more tubes increases probability of finding dormice, refers to values in different approach. State that 15-19 score regarded adequate given constraints. 20 not an absolute minimum.

-20 indicates a thorough survey,

-In the circumstances such a survey is required.

Not criticising number of tubes?

-Tubes didn't cover whole site.

20 or more represents a thorough survey?

-If looking in right place and using the right tools

-NPA have looked in right place, but not using the right tools.

Score of 77.7 far more than adequate?

-Agreed

Score of 16.3 has the potential of being regarded as adequate?

-Stretching

Looking at it today, the survey scores well in excess of 20?

-Agreed

Criticism of the score of 16.3 is an historic criticism, remedied by later surveys?
-Only if trying to score points, not if trying to find dormice.

Throughout all this effort, only three pieces of evidence have found, all to the east of the bypass.
-Only because survey methodology was wrong.

CD8.7A. Guidance on species protection. No reference in evidence by way of quotation?
-No

Nowhere do you take us to any part or provision of the guidance?
-No

CD8.7A Pg53. Appropriate overall applications and derogations. Para 11. Refers to Art12. Pg19, Para 53. Directive allows members states measure of flexibility. Habitat Directive allows states to implement policy in appropriate manner. The approach within guidance is for a response to be appropriate and proportionate?
-Agreed

We have specific guidance on this matter from PPS9?
-Agreed

Main proof para 26. Suggesting that don't stop underpass at point where it would emerge, but extent it some distance further so that planting can run across top of extended underpass alongside of road?
-Agreed, provides continuity alongside of the road for dormice.

Effect of that would be to allow continuity to run alongside road to connect with green bridges?
-Correct

Re-examination

Discussion about the experimental nature of much of the mitigation. Could you expand briefly in your view what could or should WCC in terms of proven mitigation?
-Green bridges are the only proven method of mitigation.
-A Green bridge should be provided at Bere's Mere.

Put to you that there was no evidence of dormice at Bere's Mere and at other locations.
-Situation is that surveys have not been done in the right places. Where tubes were used in the right place, then dormice were found.

Taken to extract from DCH. WCC 107. Reference made to rope bridges. Might be feasible within wood, but not applicable in large situations. Highways Agency suggested as mitigation, without there being any scientific evidence that dormice use.

-Highways Agency no longer recommends in draft advice.

Japanese bridges. Is this type of bridge being suggested here?

-Not to my knowledge.

What do you understand by the precautionary principle?

-Take precautions just in case something is present.

Has been applied in this instance?

-Not in terms of getting dormice across the road in underpasses and tube bridges.

Effects of 18 construction on dormice?

-During the construction period the dormice population will be split in two, would be unusual if population died out in that period of time.

Reference made to surveys. Referred to canopy. What is importance about canopy surveys?

-If shrub layer is thin, dormice will live in canopy during summer and will not come down trees until hibernation.

Inspector's Questions

How closely related are the Japanese and European dormouse?

-Similar size

-Same basic lifestyle, fairly long lifespan, hibernate, slow reproduction, generally nocturnal

-Japanese dormice run under branches rather than on top of them.