

ADVANCE SUPPLEMENTARY REPORT
TO THE PLANNING COMMITTEE
21st July 2015

Agenda item 9

Application ref. 15/00353/FUL

Halcyon, Tower Road, Ashley Heath

Since the preparation of the agenda report the **Highway Authority** has considered the revised Engineering Layout Plan and has confirmed that it is acceptable.

One further **representation** letter has been received stating that as there are at least 3 ponds within 250m of the proposed development, a Great Crested Newt survey is required. There have been historical sightings of Great Crested Newts within 250m of the proposed development site as recorded by the Staffordshire Ecological Records.

A report has been received from the **applicant's Ecological Consultant**. A summary of the report is as follows:

- While it is preferable to have full survey data on European Protected Species in advance of planning being determined, recent case law in October 2014 has suggested that this is not a requirement where the favourable conservation status of such species can be maintained within the proposals.
- A desk study has been undertaken and a single pond is apparent on Ordnance Survey maps and aerial photographs within 250m of the site. The pond is around 101m to the north of the site within a private garden. Further ponds may be present but these have not been identified.
- A site walkover was undertaken in February 2015 and there is no suitable great crested newt (GCN) breeding habitat on site.
- It has not been possible to survey the pond(s) within 250m of the site as the one identified is within a private garden. For the purpose of this assessment it is assumed to be suitable and to support breeding GCNs.
- The proposed development will not have any impact on GCN's breeding habitat. The scale of habitat loss is unlikely to have a significant impact on GCNs. However in the absence of mitigation the removal of habitats, particularly the hedgerow, may result in the disturbance and killing/injury of GCNs.
- Mitigation is recommended based on the assumption that GCNs are present. The mitigation is based on best practice guidelines and aims to minimise disturbance, avoid killing/injury to newts and to provide habitat enhancement thereby ensuring that the favourable conservation status of GCNs is maintained.
- The mitigation includes temporary amphibian fencing, newt relocation and habitat enhancement.
- If access can be arranged to the identified pond(s) then a survey will be undertaken to confirm the presence/absence of GCNs, population size and identify the need for a licence and relocation exercise. The results of the surveys will not influence the proposed site layout, which can accommodate appropriate mitigation for GCNs irrespective of the survey findings.
- In conclusion, the proposed development is unlikely to have a significant impact on GCNs. The small scale loss of terrestrial habitat and risk to GCNs can be mitigated through the measures outlined.

Officer comments

Natural England's Standing Advice states that a survey for GCNs is required for a minor proposal such as this if there are ponds within 250m of the application site. No Great Crested Newt Survey has been submitted for the proposed development. As detailed above however, the applicant's Ecological Consultant has taken a precautionary approach and assumed the presence of GCNs. On this basis, mitigation has been recommended.

Your Officer has considered recent case law on the requirement for a Protected Species Survey and there appear to have been conflicting judgements on the matter. In one case the Judge concluded that it is essential that both the presence of protected species and the extent that they may be affected by the proposed development is established before planning permission is granted. In another recent case however, the Judge took a different view and concluded that even where there was no proper European Protected Species (EPS) survey information there was likely to be room within the site for compensatory habitat and therefore EPS data was not needed before determination of the planning application.

In this case there is room within the proposed development to accommodate appropriate mitigation irrespective of the survey results. Whilst there have been differing opinions, there is case law to suggest that a GCN survey is not always necessary prior to determination of an application. A report has been submitted by a suitably qualified expert recommending appropriate mitigation in accordance with best practice guidelines. Therefore, subject to a condition requiring appropriate mitigation, it is not considered that a refusal could be sustained on the grounds of impact on protected species.

The RECOMMENDATION is to permit subject to the conditions as set out in the main agenda report with an additional condition requiring mitigation measures for protected species.