

Development Management Committee

Wednesday 02 April 2014

Late Observations Schedule

Schedule Items

<u>Item</u>	<u>App No</u>	<u>Observations</u>
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3	13/0590	Consultation Reply from Natural England
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"With regards to the additional pink-footed goose information submitted Natural England advises that this proposal is unlikely to have a significant effect on the Morecambe Bay SPA population.

With regards to the Great Crested Newt (GCN) mitigation strategy we are satisfied that the proposed mitigation for GCN including the habitat enhancements is adequate and is broadly in accordance with the requirements of the GCN mitigation guidelines. We note some of the ponds cannot be surveyed for GCN due to accessibility issues. Natural England appreciates that it is not always possible to gain access to all areas which require surveys to be undertaken. However, we would advise the Council to ensure that reasonable efforts have been made to gain access to areas that need to be surveyed and that this is done in an auditable way."

Consultation Reply from Lancashire County Ecology

They highlight the role of the local planning Authority in assessing the significance of whether the development will impact on the Morecambe Bay SPA Pink Footed Geese population, and should record its decision. They support the imposition of a condition to ensure that appropriate mitigation in the wider area is introduced should the development go ahead with respect to this species.

With regard to great Crested Newts they refer to the survey work undertaken by the applicant's consultant and its statement that the risk to newts is relatively low, albeit that this is not been based on a full survey of the ponds surrounding the site. County Ecology are concerned about this conclusion as they comment that the presence/absence of Great Crested Newts has not been confirmed and so they believe that the adequacy of the mitigation measures cannot be assessed properly as the size of any population is not known.

The application has proposed a level of mitigation based on an estimation of a potential population, but the County Ecologist refers to standing advice from Natural England that advises that mitigation should not be based on 'worst case scenario' as the baseline data is not known. They conclude that this uncertainty means that the local planning authority remains unable to discharge its statutory legal duty to have regard to the Conservation of Habitats and Species Regulations 2010

Further Ecological Information

The applicant has provided further information with regard to the population of Great Crested Newts in the area drawn from a new analysis of survey data that has been undertaken in the area in support of other planning applications. This expands the knowledge base on which their previous submissions had been based and they argue that this demonstrates that the area does not support a significant or large population of great crested newts.

This information was received on 1 April 2014 and is with the County Ecologist for their further consideration, but these comments are not available at this time.

Additional Officer Comments on Ecology Issues

Pink Footed Geese – With the advice of Natural England being that they are now satisfied that the applicant has demonstrated there is unlikely to be a significant effect on the Morecambe Bay SPA population, your officers are satisfied that there is now sufficient information available in order to allow the local planning authority to carry out a Habitats Regulations Assessment prior to determining the application. Condition 16 requires that a mitigation scheme be submitted and implemented to ensure that the risk of disturbances are reduced and the habitat of surrounding land is enhanced, and is considered to be adequate for this matter.

Great Crested Newts - Lancashire County Ecology have provided guidance that explains their concerns over the adequacy of the survey undertaken and so the certainty of whether the development will impact on this protected species, and so the adequacy of the proposed mitigation. If this view were accepted a reason for refusal would be appropriate on this matter. However, the applicant has just provided further information that provides more certainty to their view that there is no significant population of Great Crested Newts in the area. This information remains under consideration and it is appropriate to allow officers to progress this depending on the advice from the specialist advisor on this matter, once received. This is essentially the position as set out in the Committee Report and its recommendation.

Further Planning Information

The applicant has written to explain their position on a number of matters following the publication of the Committee Report and given that they will be unable to speak at the meeting. These are summarised as follows:

- Appeal and Costs - They refer to the intention to lodge an appeal should the application be refused, or on non-determination on the passing of its time for determination. They also refer to an intention to apply for costs on the basis of the reasons for refusal of the application being proven to be flawed and without evidence, and so that the applicant has had to incur unnecessary expense in pursuing the appeal and the council behaving unreasonably.
- Flooding and Drainage - They highlight that United Utilities are the statutory consultee for drainage matters and have re-confirmed their lack of objection to the proposal. A reason for refusal on drainage grounds would be the subject of the costs application.
- Ecology - They highlight the lack of objection from Natural England, and explain the efforts they have made to establish the size of any Great Crested Newt population and the mitigation they propose should one be present. They argue that a reason for refusal on ecological impact would not be

- appropriate.
- Highway Safety - They refer to the lack of objection on this basis from the highway authority and the flexibility in the condition to relocate the proposed Zebra Crossing if that proves necessary. If a reason for refusal on highway safety grounds is imposed it would be the subject of the costs application.
 - Education Provision - They refer to the local plan and NPPF support for the provision of contributions to improve local education capacity, and that they have offered to make such a contribution. They refer to the lack of objection from the Local Education Authority on this basis and confirm that if a reason for refusal on this basis is imposed it would be the subject of the costs application.
 - Agricultural Land - They criticise the report for failing to refer to the NPPG clarification that a loss of 20 hectares of BMV is needed for it to meet the 'significant loss' threshold in the NPPF. As this site is only 1.8 hectares, the loss of the site would not be significant and would not be in conflict with NPPF.
 - Planning Obligations - They refer to the update in the Committee report suggesting that the failure to have a planning obligation in place should form a reason for refusal if the application is refused for other matters. They reiterate their commitment to make the requested contributions for education provision enhancement, public open space enhancement and affordable housing provision and state that a reason for refusal on the basis of no agreement being in place would be unreasonable and so also the subject of a costs application.
 - Pre-determination - They express concern that the members of Committee have "*closed their mind to the debate and have therefore pre-determined the application*". This is based on Cllr Pounders move to refuse the application (which was subsequently withdrawn), the lobbying of members of Committee by objectors during a comfort break at the February meeting, discussion of reasons for refusal at members briefing, and potential lobbying of Committee members by objectors between the meetings. They would question the validity of any refusal unless members "*confirm to the Chair that they have open minds when entering the debate and withdraw themselves from the vote should there be any risk of bias in the context of s25 of the Localism Act 2011.*"

4 13/0757 **Updated Recommendation**

It is recommended that consideration of this application be deferred at the request of the applicant. This course of action was agreed at Chairman's briefing.

5 13/0786 **Amendment to Reported Consultation Reply.**

Please Note: The consultation reply from the Parks Manager refers to an area of 1.8 ha of public open space. The area of open space to be provided on this site totals 1.1ha. The assessment of the Parks Manager, that the provision of open space surpasses the aspirational target of 0.55ha per 1000 population, remains correct and the Council's own studies do not indicate a requirement for any additional POS over the proposed provision.

Additional Neighbour Observations

2 further letters of objection have been received regarding overlooking from proposed 3 storey houses and alterations to the outlook enjoyed by existing neighbouring properties in Rydal Avenue.

Amendments to proposed conditions:

Condition 3 - Change the period of maintenance to 5 years to be consistent with condition 6 on the outline application (ref 12/0550) which also specifies 5 years.

Condition 7 - Add the following words to the last line of the condition, 'unless an alternative scheme has been formally submitted to and agreed in writing by the Local Planning Authority.'

Condition 8 - Change the date the revised plans were received to 21st March.

6 13/0792 **Amended Condition**

It is proposed that condition 2 be amended to read as follows:

2. Notwithstanding the provisions of the Town & Country Planning (Use Classes) Order 1987 (or any subsequent Order or Regulation that amends or supersedes it) the use hereby approved shall be restricted to a mixed use of class B8, storage and distribution and Class A1, retail sales, relating to the sale and distribution of reptiles, insects and other exotic species only and there shall be no permitted changes from the use hereby approved, without the subsequent approval of the Local Planning Authority.

Reason: The Local Planning Authority wish to retain control over any further uses having regard to the B1, B2 and B8 use of the Business Park and policy EMP2 of the Fylde Borough Local Plan (as altered 2005); and the potential impacts that other A1 uses might have on the viability and vitality of nearby town centres.

7 14/0021 **Additional Consultation Response**

Following the highway concern raised by the Parish Council LCC Highways were consulted for their views on the suitability of the site access. Their reply in an email dated 01 April 2014 raises no objections to the proposal.

8 14/0066 **Additional Condition**

It is proposed that the following additional condition be imposed in regard to any planning permission that may be granted:

3. Within 6 months of the date of this planning permission, the access track and car parking area indicated on the approved plans shall be formed and surfaced to the reasonable satisfaction of the local planning authority and, thereafter, the access track and parking area shall be made available for use by visitors at all times that the premises are open to the public.

Reason: In order to ensure that a satisfactory vehicular access and parking area is made available, in the interests of highway safety.