

WELWYN HATFIELD COUNCIL – DEVELOPMENT CONTROL
DELEGATED REPORT

APPLICATION No:	
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NOTATION:

The site lies within XXXXX as designated in the Welwyn Hatfield District Plan 2005.

DESCRIPTION OF SITE:

DESCRIPTION OF PROPOSAL:

PLANNING HISTORY:

SUMMARY OF DEVELOPMENT PLAN POLICIES:

National Policy

PPS1: Delivering sustainable development

PPG2: Green Belts

PPS3: Housing

PPG13: Transport

Planning Policy Guidance Note 14: Development on Unstable Land

East of England Plan 2008

SS1: Achieving Sustainable Development

SS2: Overall Spatial Strategy

T14: Parking

ENG1: Carbon Dioxide Emissions and Energy Performance

Hertfordshire Structure Plan Review 1991 – 2011:

None

43: Landscape Conservation Regions

Welwyn Hatfield District Plan 2005:

SD1: Sustainable Development

GBSP1: Definition of Green Belt

GBSP2: Towns and specified settlements

R3: Energy Efficiency

R5: Waste Management

M14: Parking standards for new developments

D1: Quality of design

D2: Character and context

D5: Design for movement

D7: Safety by Design

D8: Landscaping

D9: Access and Design for people with disabilities

Welwyn Hatfield District Plan, Supplementary Design Guidance, February 2005

Welwyn Hatfield District Plan, Supplementary Planning Guidance, Parking Standards, January 2004

CONSULTATIONS

TOWN/PARISH COUNCIL COMMENTS

REPRESENTATIONS

None. Period expired.

Or

This (these) application(s) have been advertised and 0 representations have been received. Period expired.

DISCUSSION:

The main issues are:

- 1.
- 2.
- 3.
4. **Other Material Planning Considerations**

- 1.
- 2.
- 3.
- 4.

Chalk Mining: The risk assessment for this development, using the tool by Hyder, indicates a **XXX** risk. The application should therefore, in accordance with PPG14, include an **informative/condition** for:

(delete as appropriate)

Very Low Risk Sites – Informative* and notes on back of decision notice

Low Risk Site – Condition and Informative** on decision notice and notes on back of decision notice

Moderate Risk Site – Condition and Informative** (geotechnical site investigation and site-specific survey; notes on back of decision notice and informative

High Risk Site – Condition where details submitted (geophysical survey and/or downhole survey)... and Informative**

Very High Risk Site – Condition where details submitted (close centred probeholes, rotary boreholes, downhole surveys and geophysical surveys) and Informative **

*/** Note that there are two different informatives:

Protected Species The presence of protected species is a material consideration, in accordance with PPS9 (Biodiversity and Geological Conservation), Natural Environment & Rural Communities (NERC) Act 2006 (section 40), Wildlife and Countryside Act 1981 as well as Circular 06/05.

Protected species such as great crested newts, otters, dormice and bats benefit from the strictest legal protection. These species are known as European Protected Species ('EPS') and the protection afforded to them derives from the EU Habitats Directive, in addition to the above legislation. Water voles, badgers, reptiles, all wild birds, invertebrates and certain rare

plants are protected to a lesser extent under UK domestic law (NERC Act and Wildlife and Countryside Act 1981).

In the UK the requirements of the EU Habitats Directive is implemented by the Conservation of Habitats and Species Regulations 2010 (the Conservation Regulations 2010). Where a European Protected Species ('EPS') might be affected by a development, it is necessary to have regard to Regulation 9(5) of the Conservation Regulations 2010, which states:

“a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions.”

The Conservation Regulations 2010, (Regulation 41) contains the main offences for EPS animals. These comprise:

- “Deliberate capture or killing or injuring of an EPS”
- “Deliberate taking or destroying of EPS eggs”
- “Deliberate disturbance of a EPS” including 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
- “Damage or destruction of a EPS breeding site or resting place” (applicable throughout the year).
 - e.g. bat maternity roost (breeding site) or hibernation or summer roost (resting place)
 - e.g. great crested newt pond (breeding site) or logpiles / piles of stones (resting place)
 - e.g. dormice nest (breeding site or resting place (where it hibernates)

In some circumstances a person is permitted to ‘derogate’ from this protection. The Conservation Regulations 2010 establishes a regime for dealing with such derogations via the licensing regime administered by Natural England. The approval of such a license by Natural England may only be granted if three strict “derogation” tests can be met:

- the activity to be licensed must be for imperative reasons of overriding public interest or for public health and safety;
- there must be no satisfactory alternative; and
- favourable conservation status of the species must be maintained.

Notwithstanding the licensing regime, the Council as Local Planning Authority (LPA) has a statutory duty to have regard to the requirements of the Habitat Directive and therefore should give due weight to the presence of an EPS on a development site. Therefore in deciding to grant permission for a development which could affect an EPS the LPA should:

- a) Consider whether an offence to an EPS is likely to be committed by the development proposal.
- b) If the answer is yes, consider whether the three “derogation” tests will be met.

A LPA failing to do so would be in breach of Regulation 9(5) of the Conservation Regulations 2010 which requires all public bodies to have regard to the requirements of the Habitats Directive in the exercise of their functions.

Option 1 – reasonable likelihood of EPS on site, no survey

It is considered that there is a reasonable likelihood of EPS being present on the site and that one (or more) of the offences described above would result. Regulation 61 (2) of the Conservation Regulations 2010 requires the applicant to submit sufficient information for assessment. The applicant has not submitted such information required by the Council and it is therefore not possible to determine whether the proposal would comply with the three derogation tests as set out below:

- Is the development being carried out for
 - imperative reasons of overriding public interest including those of a social or economic nature? Or;
 - reasons relating to human health, public safety or beneficial consequences of primary importance to the environment?
- Is there an alternative solution? and,
- Can the effects of the development be avoided (i.e. mitigated) by the inclusion of conditions?

The application should therefore be refused as being contrary to the provisions of The Conservation of Habitats and Species Regulations 2010, Wildlife and Countryside Act 1981 and PPS9.

Option 2 – EPS on site, survey submitted.

From the information provided within the report it is considered that the proposal would be likely to result in one of the EPS offences described above. As such, it is necessary to consider the three “derogation” tests as defined within the Conservation Regulations 2010. In order for planning permission to be granted, each of the tests must be met.

- Is the development being carried out for
 - imperative reasons of overriding public interest including those of a social or economic nature? Or;
 - reasons relating to human health, public safety or beneficial consequences of primary importance to the environment?
- Is there an alternative solution? and,
- Can the effects of the development be avoided (i.e. mitigated) by the inclusion of conditions?

In accordance with Regulation 61 (2) of the Conservation Regulations 2010, the applicant has submitted the following information for assessment The applicant has advised that (need to discuss the applicants response to each of the tests above in view of information provided by applicant. It is **not** for the officer to provide information for each of the above but for the applicant to demonstrate how the three tests have been met. However HBRC and HMWT (in exceptional case NE) will be able to advise in relation to the 3rd test (mitigation) and whether from the information provided this test could be met).

If the three tests can be met....

- Comment on any avoidance measures relied upon by the developer.
- Set out any conditions/obligations to secure such measures.
- Include informative on need for EPS license from NE.

Note: If it is clear or very likely that NE will not grant a license i.e. the 3 tests cannot be met then PP should be refused. If it is uncertain then again PP should be refused.

Option 3 – no reasonable likelihood of EPS species on site OR survey submitted that identifies no species

From the information submitted, **HBRC/HMWT** have confirmed that there is not a reasonable likelihood of EPS being present. As such, it is unlikely that a EPS offence will occur and it is therefore not necessary to consider the Conservation Regulations 2010 further.

OR

The existing site and development is such that there is not a reasonable likelihood of EPS being present on site nor would a EPS offence be likely to occur. It is therefore not necessary to consider the Conservation Regulations 2010 further.

Option 4 – UK protected species only

The Natural Environment and Rural Communities Act 2006, **The Badgers Act 1992** and PPS9 are relevant for species protected by UK legislation only. PPS9, Key Principles, sub paragraph (vi), details

“The aim of planning decisions should be to prevent harm to biodiversity and geological conservation interests. Where granting planning permission would result in significant harm to those interests, local planning authorities will need to be satisfied that the development cannot reasonably be located on any alternative sites that would result in less or no harm. In the absence of any such alternatives, local planning authorities should ensure that, before planning permission is granted, adequate mitigation measures are put in place. Where a planning decision would result in significant harm to biodiversity and geological interests which cannot be prevented or adequately mitigated against, appropriate compensation measures should be sought. If that significant harm cannot be prevented, adequately mitigated against, or compensated for, then planning permission should be refused.”

The applicant has submitted as survey Discuss comments from HBRC / HMWT

The applicant has not submitted a survey Discuss comments from HBRC / HMWT

East of England Plan 2008: On 10th November 2010, The High Court quashed the decision of the Secretary of State for Communities and Local Government to unilaterally revoke Regional Spatial Strategies in England on two grounds:

- That he acted outside his statutory powers in circumventing the need for parliamentary scrutiny of such a fundamental change to the national planning system; and
- He failed to consider the likely environmental effects of revoking Regional Strategies

However, the Government is still committed to the abolition of Regional Spatial Strategies through the Localism Bill, which is expected to begin its passage through Parliament before Christmas. In the meantime, the policies in the East of England Plan are re-established and form part of the development plan again and are therefore a material consideration which can be taken into account in reaching a decision. However, the Government's intention to abolish Regional Spatial Strategies is also a material consideration that could be considered to reduce the weight to be attached to policies in Regional Spatial Strategies.

The application has been considered against policies in the East of England Plan, which at the time of this decision forms part of the development plan for the Borough but that the weight accorded to these policies, in light of the above circumstances, has been carefully considered in reaching a decision.

CONCLUSION:

RECOMMENDATION: APPROVAL WITH CONDITIONS

RECOMMENDATION: REFUSAL AND REASON (S)

RECOMMENDATION: LISTED BUILDING CONSENT WITH CONDITIONS

RECOMMENDATION: GRANT EXPRESS ADVERTISEMENT CONSENT FOR * YEARS

CONDITIONS:

2.C.13.1: Development in accordance with approved plans/details received and dated

SUMMARY OF REASONS FOR THE GRANT OF PERMISSION:

Reason for Grant of FP/LB/CA/DT/ (*Approvals only*):

The proposal has been considered against Planning Policy Statement/Guidance xxxxx, East of England Plan 2008 policies xxxxx and development plan policies xxxxxxxxxxxxxx of the Welwyn Hatfield District Plan 2005, in addition to the Human Rights Act 1998, which, at the time of this decision indicate that the proposal should be approved. Material planning considerations do not justify a decision contrary to the development plan (see Officer's report which can be inspected at these offices).

INFORMATIVES:

DRAWING NUMBERS:

Site Location Plan XX and date stamped XX

Signature of author.....

Date.....