

**WELWYN HATFIELD BOROUGH COUNCIL – DEVELOPMENT MANAGEMENT**  
**DELEGATED REPORT**

<b>APPLICATION No:</b>	<b>XXXX</b>
<b>APPLICATION Site:</b>	<b>XXXX</b>

**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 POLICIES:**

National Planning Policy Framework

Planning Policy for Traveller Sites

PPS10: Planning for Sustainable Waste Management

Circular 03/09: Costs Awards in Appeals and Other Planning Proceedings

Hertfordshire Structure Plan Review 1991 – 2011:

None

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

RA3: Extensions to Dwellings in the Green Belt

RA4: Replacement Dwellings in the Green Belt

RA10: Landscape Regions and Character Areas

RA11: Watling Chase Community Forest

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:** None

**REPRESENTATIONS:**

None, period expired

Or

This application has been advertised and XX representations have been received, raising the following comments:

Period expired

**DISCUSSION:**

The main issues are:

- 1.
- 2.
- 3.

1.

2.

**3. Other Material Planning Considerations**

**Chalk Mining:** As with all developments across Hatfield, the suitability of the development in accordance with the National Planning Policy: Development on Unstable Land needs to be assessed. The site is not within any designated area that has been identified as possibly being at risk of chalk mining. As the development would result in little alteration in terms of weight bearing load upon ground conditions, an informative only is required.

**Protected Species** The presence of protected species is a material consideration, in accordance with the National Planning Policy, 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).

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 and amended 2012 Regulations further.

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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) and as amended through The Conservation of Habitats and Species (Amendment) Regulations 2012. Where a European Protected Species ('EPS') might be affected by a development, it is necessary to have regard to Regulation 9(1) of the Amended Conservation Regulations 2012, which states:

*“a competent authority must exercise their functions which are relevant to nature conservation, including marine conservation, so as to secure compliance with the requirements of the Directives.”*

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(1) of the Amended Conservation Regulations 2012 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, Conservation of Habitats and Species (Amendment) Regulations 2012, Wildlife and Countryside Act 1981 and NPPF.

#### **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 applicant’s 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 3<sup>rd</sup> 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 or (Amendment) Regulations 2012 further.

### **Option 4 – UK protected species only**

The Natural Environment and Rural Communities Act 2006, The Badgers Act 1992 and NPPF are relevant for species protected by UK legislation only.

The National Planning Policy states that local planning authorities should aim to conserve and enhance biodiversity.

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

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

**CONCLUSION:**

**RECOMMENDATION: APPROVAL WITH CONDITIONS**

**RECOMMENDATION: REFUSAL AND REASON (S)**

**RECOMMENDATION: LISTED BUILDING CONSENT WITH CONDITIONS**

**RECOMMENDATION: GRANT EXPRESS ADVERTISEMENT CONSENT FOR \* YEARS**

**CONDITIONS:**

1. C.2.1 Time limit for commencement of development
2. C.13.1 Development in accordance with approved plans/details received and dated

**Post Development**

3. C5.2 Matching materials

**SUMMARY OF REASONS FOR THE GRANT OF PERMISSION:**

The proposal has been considered against the National Planning Policy Framework, East of England Plan 2008 xxxxx and Development Plan policies xxxxxxxxxxxxxxxx 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. The decision has also been made taking into account, where practicable and appropriate the requirements of paragraphs 186-187 of the National Planning Policy Framework and material planning considerations do not justify a decision contrary to the development plan (see Officer's report which can be inspected at these offices).

**SUMMARY OF REASONS FOR REFUSAL**

The proposal has been considered against the National Planning Policy Framework, East of England Plan 2008 xxxxx and Development Plan policies xxxxxxxxxxxxxxxx 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 refused for the reason(s) set out above. The decision has been made taking into account material planning considerations and where practicable and appropriate the requirements of

paragraphs 186-187 of the National Planning Policy Framework (see Officer's report which can be inspected at these offices).

**INFORMATIVES:**

**REFUSED DRAWING NUMBERS:**

Site Location Plan XX received and dated XX

**Signature of author..... Date.....**