

Planning Reference No:	10/3135C
Application Address:	6, Rowan Close, Sandbach, CW11 1XN
Proposal:	Proposed Boundary Fence at 6 Rowan Close, Sandbach
Applicant:	Mr Flowers
Application Type:	Full Planning
Grid Reference:	374676361100
Ward:	Sandbach
Earliest Determination Date:	17-Sept-2010
Expiry Dated:	07-Oct-2010
Date of Officer's Site Visit:	17-Jun-2010
Date Report Prepared:	06-Sept-2010
Constraints:	

SUMMARY RECOMMENDATION

REFUSE

MAIN ISSUES

- **Principle of Development**
- **Protected Species**
- **Nature Conservation**
- **Trees**
- **Amenity**
- **Design**

1. REASON FOR REFERRAL

This application has been called in to the Southern Area Planning Committee by Councillor B Moran for the following reasons:-

“The erection of the proposed boundary fence may have an unacceptable detriment to the residents at No. 7 Rowan Close, in terms of visual intrusion that could be caused by the design [height, length, scale and appearance] and the locality of the proposed fence across the pond.

In my view, this application should be carefully assessed against policy numbers : GR2 1) D and GR6 iii) of the Local Plan, which are designed to afford protection.”

2. DESCRIPTION OF SITE AND CONTEXT

The application site measures 1023 sq. m and comprises an existing substantial and modern two storey detached dwelling and its residential curtilage known as no. 6 Rowan Close. The property lies at the head of the cul-de-sac which is accessed off Middlewich Road in Sandbach. The site contains half of a large pond which is shared with the neighbour at no. 7 Rowan Close. There are a number of mature deciduous trees which are within Area A4 of the Middlewich Road No 2. Sandbach TPO 1988.

The site is classed as Greenfield land and is located within the settlement boundary of Sandbach. However it backs onto Sandbach golf course which is a designated recreational facility and sited within the open countryside.

3. DETAILS OF PROPOSAL

The proposal relates to the erection of a boundary fence across the pond. Planning permission is required because the fence would be over 2m high when measured from the adjacent ground level.

Permitted Development for Householders: Guidance from Communities and Local Government March 2010 indicated that in respect of the application of permitted development rights:

“Height” - references to height (for example, the heights of the eaves on a house extension) is the height measured from ground level. Ground level is the surface of the ground immediately adjacent to the building in question. Where ground level is not uniform (eg if the ground is sloping), then the ground level is the highest part of the surface of the ground next to the building.

The height is taken from the highest part of the ground surface next to the fence, this would make the fencing 2.3m in height. The fence would comprise vertical close boarded panels, spanning 15.1m in length adjoining the existing projecting timber fence. The fence would be supported by posts and would lie along the site boundary of the property, across the pond.

4. RELEVANT HISTORY

10/1987T Fell Maple and Prune Other Trees 13-Jul-2010 Approved

10/0149T Prune Trees 09-Mar-2010 Approved

10/1865C New Dwelling 15-Oct-2010 Withdrawn

5. POLICIES

Regional Spatial Strategy

None relevant

Local Plan Policy

PS3 Settlement Hierarchy

PS4 Towns

GR1 New Development

GR2 Design

GR6 Amenity and Health

GR9 New Development

GR17 Car Parking

NR1 Trees and Woodland

NR3 Habitats

NR5 Non Statutory Sites

Other Material Considerations

Planning Policy Statement 1 (Delivering Sustainable Development)

Planning Policy Statement 9 (Biodiversity and Geological Conservation)

6. CONSULTATIONS (External to Planning)

Forestry and Landscaping section:

- There are a number of inaccuracies within the arboricultural report submitted and the report makes a number of recommendations for tree works which do not appear to be related to the development. As such these should be considered under a TPO application for tree works. In addition, the tree protection measures shown would not be acceptable for the development subject of this application.
- No information has been provided with regard to the proposed means of construction of the fence. Taking into account the presence of protected trees, the confined working area available, levels and the apparent depth of the pond, I consider further information should be required in this regard prior to determination.
- In the event that the development is deemed acceptable, it is suggested that conditions in respect of arboricultural supervision throughout construction works for the fence and an amended Arboricultural Method Statement should be imposed.

Ecology:

Initially the Council's Ecologist did not anticipate there being any significant ecological issues associated with the proposed development, and recommended a condition to safeguard breeding birds. However since this time, information has been submitted which indicates that Great Crested Newts are present at the edge of the pond within the garden of no. 7 Rowan Close.

The confirmed presence of this species at the site does substantially alter the advice in connection with this application.

The proposed erection of a fence across the pond involving the insertion of fence posts into the pond bed may potentially result in an adverse impact upon Great Crested Newts through the disturbance, killing and injuring of any animals present in the pond when the works are undertaken. If the installation of the fence also requires the disturbance of any terrestrial features that could be used for shelter by Great Crested Newts during the terrestrial phase then there may potentially also be some risk posed to Great Crested Newts making use of such features.

No information has been received from the applicant regarding the potential adverse impact of the proposed development upon protected species and how any potential impacts will be mitigated and /or compensated for. In its current form the application therefore potentially poses a risk to a European protected species.

Cheshire Wildlife Trust:

- The erection of the fence may result in a degradation of aquatic habitat for the Great Crested Newt population considered likely to be associated with the pond. The installation of the fence potentially poses a risk to Great Crested Newts and other amphibians in a number of ways:

- Installation of the fence could result in direct disturbance to Great Crested Newt, their eggs and/or larvae if carried out during their aquatic phases.
(potentially a breach of current wildlife legislation).
- Treated fence timbers could leach chemicals into the water. All amphibian larvae are particularly sensitive to contaminants within water bodies and will quickly succumb if a pond is contaminated with noxious chemicals including many commonly used wood treatment products. (Potentially a breach of current wildlife legislation in respect of damage to a Great Crested Newt breeding site).
- As above any future maintenance works on the fence (repainting/retreating with preservatives) may also pose a direct threat to amphibians and other wildlife associated with the pond if they enter the pond.
- The fence may also result in excessive shading of areas of the pond potentially reducing water temperature, invertebrate diversity and reducing aquatic vegetation within the pond.
- Excessive shading of the pond could potentially impact on Great Crested Newt by reducing the availability of egg laying substrate (water plants) food (aquatic invertebrates) with any sustained/permanent drop in water temperature likely to significantly hinder successful Great Crested Newt/amphibian larval development to the detriment of the amphibian population/s associated with the site.

7. VIEWS OF THE PARISH COUNCIL Objects on the following grounds:

- Inaccuracies within submission
- The fence would be unsympathetic to the character, form and appearance of the site, and detrimental to the visual, physical and functional relationship of the proposal to neighbouring properties
- The fence would affect the balance of the existing open space, setting and overall design of the area between no 6 and the neighbouring property
- The fence would adversely affect the landscape and character of the area and would be a visual intrusion for the adjoining property
- The fence would result in environmental disturbance and pollution
- The application has not had regard to the wider environmental consequences arising from such a development.

8. OTHER REPRESENTATIONS:

Letters of objection from the occupants of 2, 4, 5, 8 Rowan Close, Oak Farm, The Heath, 5 Sandford Crescent Wychwood Park & Sandbach Golf Club. The letters of objection raised the same issues as those raised by the Town Council and these additional issues:

- Water table may appear 3.3m above water level
- Suggest post and wire fencing and condition overall height if approved
- Not required on privacy grounds due to changes in topographical levels
- Precedent for dwelling
- No details submitted in respect of piles or method statement
- Impact upon ecology and wildlife
- Pollution/ contamination concerns
- Concern regarding durability and longevity of the fence
- Appendix 1 in report not relevant to these proposals

- Impact on property values
- Annoyance to neighbours
- Amenity issues: loss of outlook, loss of light
- Objections from Sandbach Town Council
- Concerns regarding structural stability

Letter of representation from Clear Environmental Consultants indicating that 6 Great Crested Newts were found at the edge of the pond.

9. APPLICANT'S SUPPORTING INFORMATION

Tree Report; summary

- Survey identified and recorded 11 trees which could potentially be affected by the development of the site
- 4 trees recorded as category A those of high quality and value
- 4 trees recorded as category B those of moderate quality and value
- 2 trees recorded as category C those of low quality and value
- 1 tree recorded as category R due to the presence of white rot
- No trees would be removed or pruned
- Trees 945 and 949 require crown lifting
- Tree works have been recommended to benefit the trees and increase their safe useful life expectancy
- Recommends root protection area barrier
- Ground protection should be designed by an engineer

10. OFFICER APPRAISAL

Principle of Development

The site lies within the settlement zone line of Sandbach where there is a presumption in favour of development.

There are no saved policies within the Local Plan which specifically relate to the erection of boundary fences within the curtilage of a residential property and therefore the general policies which relate to issues such as design, amenity, nature conservation and protected species are relevant. These issues have been considered below.

Protected Species

Ponds are suitable habitats for Great Crested Newts which are listed as a protected species under schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and the existing mature trees on the site are suitable habitats for Bats, Barn Owls and Breeding Birds. Protected species are considered to be a material consideration in the determination of a planning application, and therefore any impact must be considered and mitigated accordingly.

The EC Habitats Directive 1992 requires the UK to maintain a system of strict protection for protected species and their habitats. The Directive only allows disturbance, or deterioration or destruction of breeding sites or nesting places,

- in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment and provided that there is

- no satisfactory alternative and
- no detriment to the maintenance of the species population at favourable conservation status in their natural range

The UK implemented the Directive by introducing The Conservation (Natural Habitats etc) Regulations 1994 which contain two layers of protection

- a requirement on Local Planning Authorities ("LPAs") to have regard to the Directive's requirements above, and
- a licensing system administered by Natural England.

Local Plan Policy NE.9 (Protected Species) seeks to prevent harm to protected species and their habitats.

Circular 6/2005 advises LPAs to give due weight to the presence of protected species on a development site to reflect EC requirements. "This may potentially justify a refusal of planning permission."

PPS9 (2005) advises LPAs to ensure that appropriate weight is attached to protected species "Where granting planning permission would result in significant harm [LPAs] will need to be satisfied that the development cannot reasonably be located on any alternative site that would result in less or no harm. In the absence of such alternatives [LPAs] should ensure that, before planning permission is granted, adequate mitigation measures are put in place. Where significant harm 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."

PPS9 encourages the use of planning conditions or obligations where appropriate and again advises [LPAs] to "refuse permission where harm to the species or their habitats would result unless the need for, and benefits of, the development clearly outweigh that harm."

The converse of this advice is that if issues of detriment to the species, satisfactory alternatives and public interest seem likely to be satisfied, no impediment to planning permission arises under the Directive and Regulations.

The document Guidance on Local Requirements for the Validation of Planning Applications: Biodiversity and Geodiversity Conservation Statements March 2009 produced in association with Natural England and the Association of Local Government ecologists states that the impact of development on Great Crested Newts is highly variable and site specific. In this instance, there was not a requirement to submit a protected species survey with the application.

This application should be viewed in the context of the previous application which was withdrawn. Under the previous application (10/1865C), a Protected Species Survey was submitted, which was undertaken by a suitably qualified and experienced ecologist. As proposed tree work (felling or lopping) is proposed under this application and was proposed under the previous application, the protected species survey had surveyed Bats, Breeding Birds and Great Crested Newts. As this survey was undertaken less than 12 months ago, its findings remain valid. The results section of the survey indicated that the development (erection of a dwelling and infilling of the pond) would have no impact on these species.

The ecologist's report explained that following detailed survey work the existing garden pond divided between no. 6 and no. 7 Rowan Close was found to have a very low ecological value. The Council's Ecologist in his response to 10/1865C confirmed that the details of the survey and additional information were acceptable.

However, a letter has been received from Clear Environmental Consultants indicating that 6 Great Crested Newts were found at the site. Cheshire Wildlife Trust and the Council's Ecologist have confirmed that if Great Crested Newts are present, the development could have an adverse impact upon this population through the disturbance, killing and injuring of any animals present in the pond when the works are undertaken.

No information has been received from the applicant regarding the potential adverse impact of the proposed development upon protected species and how any potential impacts will be mitigated and /or compensated for.

As such further survey work is required to confirm the population size, and mitigate for the potential adverse impact of the proposed development upon protected species.

As a European Protected Species has been recorded on site and may possibly be adversely affected by the proposed development the Local Planning Authority is required to consider the tests prescribed by the Habitat Regulations when determining this application. In the absence of evidence to the contrary, the proposals are likely to have an adverse impact upon Great Crested Newts which would be contrary to policies NE3 and NR4 and guidance contained within PPS9.

Nature Conservation and Habitats

Under the previous application it was considered that the findings of the Protected Species Survey indicated that the pond had limited value as a nature conservation resource. This was because the pond was utilised as a garden pond with ornamental planting, aquatic fish and ducks being present. The likelihood of it representing a suitable habitat for protected species or other native wildlife was low.

That said, as Great Crested Newts were found on the banks of the pond, this pond represents a habitat for these species. Whilst the subdivision of the pond would not result in the loss of this resource, to allow the development in the absence of an up-to-date protected species survey, which identifies how the impact of the development would be mitigated, would be contrary to policy NR3 which seeks to protect against the loss of habitats.

Trees

The site contains a number of trees which are protected by area A4 of the Middlewich Road II Sandbach Tree Preservation Order which came into effect on 22 June 1988. The first schedule to the order describes the trees concerned as mixed deciduous and coniferous trees. A Maple and Silver Birch have been felled with the benefit of Tree Preservation Order Consents and a further application has been made to fell a Maple tree infected by honey fungus. Tree planting is proposed within the hedgerow along the north eastern boundary of the site using native species which are known to be more resistant to honey fungus. The tree survey also suggests some crown lifting to trees 945 and 949. However, this is not as a result of the proposal but due to the presence of crossing

branches and encroachment to adjacent trees. A further tree (952) contains white rot and potentially honey fungus but it is not proposed to remove it at this stage.

In terms of the works proposed to the trees, there is little difference between this scheme and the previous proposal for a new dwelling. There are concerns that the arboricultural report as submitted does not accurately reflect the development proposed, its likely impact or the appropriate mitigation measures. That said, this issue could be addressed by the submission of an amended arboricultural report and the requirement for an arborist to be present during the construction phase of the development.

Amenity

The orientation of the garden of no. 7 and the existing tree cover results in overshadowing at present. Whilst the fencing would overshadow part of the pond, it would not overshadow a significant proportion of the garden. The impact would therefore be limited rather than significant, and as such a reason for refusal on these grounds cannot be sustained. Whilst there may be a loss of view/ outlook across the pond, the properties at no. 6 and no. 7 Rowan Close would still retain an outlook across their respective gardens. Loss of view is not a material planning consideration.

The fence would provide some added privacy for both no. 6 and no. 7 however this fence would not completely prevent overlooking. In any event, it would not make the existing situation worse.

Design

The properties of Rowan Close, having been built by the same builder and being part of one development, have a consistency of architectural style and size. They are all executive detached houses of contemporary appearance having 4 bedrooms or more and are set in their own gardens. The boundaries to the front gardens are marked by low walls or hedges or remain open. There is existing closeboarded fencing extending into the pond however the pond and garden areas remain open along the shared boundary between no. 6 and no. 7 Rowan Close.

The proposed fencing would match the height and materials of this existing fencing which projects into the pond and as such would ensure that an appropriate continuity of the fence line would be maintained across the pond. The new fencing would not appear incongruously positioned in relation to the existing fence line, and visually it would form an appropriate subdivision to the pond.

There are a number of evergreen trees and a recently planted section of Leylandii hedge on the south western boundary of the site and this vegetation would restrict views of the proposed fence from the public domain.

The principal consideration in respect of design is therefore the visual impact in respect of the garden areas of no. 6 and no. 7 Rowan Close. Whilst the proposal would involve the enclosure of the gardens which currently remain open, it should be noted that a fence 2m high could be erected along this boundary. This is a material consideration and therefore the Local Planning Authority can only assess the visual impact of the additional 0.3m. As this would ensure a uniform height across the length of the pond in relation to the existing fencing, it is considered appropriate in this instance.

In respect of the relative height of the fence in relation to water levels, as the fence would be erected on timber posts, even if these posts are permanently visible rather than temporary, this would not make the overall appearance of the development appear incongruous.

Other Matters

The comments included within representations raised a number of further issues which are discussed below.

As there is a policy presumption in favour of development it is not considered that the applicant is required to provide a comprehensive justification for the development on privacy, or any other, grounds. Similarly, the applicant's motivations for submitting the application are not a material consideration. This application must be judged on its own merits and in accordance with the relevant development plan policies.

The discrepancies within the submitted information have been duly considered and the implications of this have been discussed in the relevant sections. The case officer is aware of the discrepancies however this has not affected the assessment of the application other than where it is expressly mentioned. A site visit is undertaken for all applications whereby the details submitted can be independently verified.

The applicant has not provided details in respect of construction of the proposed boundary fence through the pond or treating and maintaining the proposed boundary fence. That said, these details could have been required to be submitted via condition.

The durability and longevity of the fence is not a material consideration. Details of materials and finishes could be conditioned and therefore reasonable steps can be taken to ensure that the development would not have an unduly short lifespan.

The proposal would have no adverse impact upon highway safety.

11. CONCLUSIONS

The proposal would have an adverse impact upon protected species and therefore would be contrary to policies NR3 and NR4 within the Local Plan and guidance contained within PPS9.

12. RECOMMENDATIONS

REFUSE Reason:-

1. The proposal fails to demonstrate that the proposed fence would not have an adverse impact upon Great Crested Newts and their habitat which are known to be present at the site. In so doing the proposals would potentially harm, injure or kill a protected species and/ or harm its habitat. As such, to allow the development would be contrary to policies NR3 Habitats and NR4 Non Statutory Sites within the Congleton Borough Local Plan First Review 2005 and guidance contained within PPS9 Biodiversity and Geological Conservation.

Location Plan :

