

Planning Reference No:	P09/0095
Application Address:	Land off Wybunbury Lane Stapeley
Proposal:	Use of Agricultural Land as Rugby Pitches
Applicant:	Crewe & Nantwich RUFC
Application Type:	Full
Grid Reference:	368019 351048
Ward:	Wybunbury
Earliest Determination Date:	4 th March 2009
Expiry Dated:	1 st April 2009
Date of Officer's Site Visit:	11 th February 2009
Date Report Prepared:	16 th March 2009/2 nd July 2009/20 th July 2009
Constraints:	Open Countryside

SUMMARY RECOMMENDATION:

Approve with conditions

MAIN ISSUES

- The impact upon the character and appearance of the area
- The impact upon neighbouring residential amenity
- The impact upon protected species
- Highways issues

1. REASON FOR REFERRAL

This application was deferred at the Southern Planning Committee meeting of the 15th July 2009 for a site visit. The applications was also heard at the Development Control Committee for Crewe and Nantwich Borough Council on 26th March 2009 with a determination to grant delegated powers to the Head of Planning to approve the application following further consultation with the Environmental Health Department and Ecologist at Macclesfield Borough Council regarding late representations which have been received. Following a review of the additional information submitted and on receiving legal advice the Head of Planning (now Development Manager) considers it inappropriate for her to exercise the delegated authority given in the committee decision, as it is necessary for the committee to apply its mind to the additional material included in this report at section 8 Officer Appraisal – Amenity and Protected Species (Addendum) and reach a decision in light of it.

2. DESCRIPTION OF SITE AND CONTEXT

The site is located on the northern side of Wybunbury Lane within the open countryside. The land is currently in agricultural use and is bound by a mix of hedgerows and trees of varying sizes and quality to the northern, southern and western boundaries. A 1 metre high post and rail fence forms the boundary to the eastern boundary of the site. Open drains run along the northern and western boundaries of the site. To the north of the site are the existing Crewe & Nantwich Rugby Club pitches and the Crewe Vagrants Club. Access to the site would be from the north via the existing access from Newcastle Road with the existing car park at the Crewe Vagrants Club serving the site.

3. DETAILS OF PROPOSAL

This is an application for the change of use of the land from agricultural to rugby pitches. The application does not include any buildings, advertising hoarding or floodlights.

4. RELEVANT HISTORY

P00/0605 - Renewal of Temporary Permission for Use of Agricultural Land as Rugby Pitches. Approved 6th December 2000
P98/0537 - Use of land as rugby pitches as extension to existing sports ground. Temporary approval given until 17th September 2000

5. POLICIES

The relevant development plan policies are:

Policies in the Local Plan

NE.2 (Open Countryside)
NE.5 (Nature Conservation and Habitats)
NE.9 (Protected Species)
NE.12 (Agricultural Land Quality)
BE.1 (Amenity)
BE.2 (Design Standards)
BE.3 (Access and Parking)
BE.4 (Drainage, Utilities and Resources)
RT.6 (Recreational Uses in the Open Countryside)

Regional Spatial Strategy

DP2 (Promote Sustainable Communities)
RDF2 (Rural Areas)
L1 (Health, Sport, Recreation, Cultural and Education Services Provision)

Government Guidance

PPS7 (Sustainable Development in Rural Areas)
PPS9 (Biodiversity and Geological Conservation)
PPG17 (Planning for Open Space, Sport and Recreation)

6. CONSULTATIONS (External to Planning)

Highways Authority: If the access to the land is taken off Wybunbury Lane the access would need to comply with CCC standards

Environmental Health: The hours of use should be restricted to; April – September 09.00 – 20.30; November – February 09.00 – 17.00 and March – October 09.00 – 18.30.

The Environmental Health Department have assessed the first Noise Assessment submitted by residents and make the following comments;

- The use of BS4142 as an assessment method for this type of noise is not appropriate as this method should only be used for the assessment of noise from industrial areas such as factories etc and not sports grounds.

- It is acknowledged that there is no standard specifically covering this type of noise. It is suggested that the preferred method of assessing the noise would have been to compare the ambient noise levels taken at the club (i.e. within 15m of the pitch as taken on the 11/3/2009) with those taken from the Spirrals. Therefore using the noise reading taken on the 11/3/2009 (as these are the only readings taken within a reasonable time of each other) the level at the Spirals is 51 dBA and the noise taken from the pitch when it is corrected for the difference in distance is 51dBA. This would demonstrate that there should be very little difference between the noise from the club and the noise currently experienced at the Spirrals.
- Unfortunately, it would not be appropriate to use the noise readings taken on the 15/3/2009 as the readings taken from the Spirrals was at a much earlier time of the day when compared with those taken from the Club. In addition, the noise reading taken from the Club are at a distance of about 100m from the pitch which when the correction factor is included this takes the noise level to 63dBA which is significantly above those taken within 15m and hence should better reflect the noise when the pitch is being used.
- With respect to the noise reading taken on the 5/3/2009 it is not possible to compare this against any of the other readings as it has been taken on a different day and hence the ambient noise levels in the area could have been different to the days when the other readings were taken.
- If as is suggested in the report the World Health Organisation Community noise levels are used (which should be based on a 16 hour day time reading and not short term reading of an hour or less) these indicate that the noise level at Spirrals is already in the category of moderate annoyance and this will not change with the noise from the use of the rugby pitches.

Therefore, based on the readings presented in the report it is considered that there will not be any significant increase in the ambient noise levels in the area as a result of the application being approved providing the proposed hours of use, as set out during our previous comments, is a condition of any approval that may be granted.

In terms of the second Noise Assessment submitted by a local resident at The Spirals Environmental Health have raised the following comments;

- Supplementary acoustic report (dated 23rd March 2009) does not provide any new noise readings but it does offer a different method of assessing whether the noise is likely to cause annoyance. It should be noted that this method should be used for the assessment of road traffic and it may not be appropriate for the assessment of noise from rugby pitches. However, this method compares LAeq values and the only readings that can be compared in the report are those taken on the Wednesday as these have been taken 15m from the boundary of the Vagrants (The Spirals will be 20m from the proposed boundary). When this level of 52dB is compared to the level at The Spirals taken on the same day (but not a similar time) which is 54dB this equates to a difference of 2dB which according to the table is insignificant and in order to perceive a change in noise level there has to be an increase of 3dB.
- In addition, using the noise levels taken on the Wednesday within 15m from boundary of the Vagrants it should be noted that this is also below the recommended level set by the World Health Organisation of 55dB in gardens and outdoor areas. Also the ambient levels taken at The Spirals are shown to exceed this level and that taken closest to the boundary of the Vagrants pitches.
- The assessment also uses readings taken at 100m from the boundary and then seeks to distance correct them. It would have been more accurate to use the same monitoring position for all of the readings which should have been the location at 15m from the boundary of the Vagrants and these should have been compared to ambient readings taken from The Spirals at a similar time. Also the assessment compares the ambient readings taken on different days of the week; this is not good practice because it is not possible to accurately predict what the noise level from the pitches would have been on these days.

- In conclusion, the Environmental Health opinion has not changed, when comparing like for like readings the residents submission does show that there would not be any significant increase in the noise levels bearing in mind that through the winter the hours of use will be controlled by not allowing flood lights and that the use of the pitches would generally follow the rugby season which is Autumn through to early Spring when the days are shorter. Also, whilst it is unlikely that the pitches will be used constantly through the day a condition could be imposed requesting that the pitches further away from the resident's property should be used first and the pitches which are the subject of this application should only be used as a last resort when all the others are in use hence limiting the time they are used.

Natural England: The Authority should request a mitigation package from the applicant for any impacts that will affect bats directly or areas they might use for shelter. Works should be carried out outside the bird breeding season (March to August) or if clearance works are undertaken then a check of the site should be made by a suitably qualified ecologist to ensure that birds are not present. If protected species are found on the site all works should stop until further surveys are carried out and a suitable mitigation package is developed.

Further representation received. Previous correspondence made on this application still stands. It is not for Natural England to decide on the level of the survey required. It is for the Local Authority as the competent authority to decide whether the applicant has sufficiently established whether or not protected species are present or not and the full extent that they may be affected by the proposed development. While Natural England does assess developments for licences and provide licences, it is not our decision as to whether a development will require a licence to proceed; this decision must be made by the applicant (via their ecologist). A licence should be applied for if, on the basis of survey information and specialist knowledge, it is considered that the proposed activity is reasonably likely to result in an offence. No licence is required if, on balance, the proposed activity is unlikely to result in an offence. While the decision for further surveys or not must be made by the Local Authority, if the application is approved without further survey, we would advise that on the basis of all evidence so far received that Reasonable Avoidance Measures (RAM'S) could be incorporated into a condition to avoid any possible disturbance of newts. If protected species are found on the site all work should stop until further surveys for the species are carried out and a suitable mitigation package is developed.

DEFRA: No comments received at the time of writing this report

Macclesfield BC Ecologist (acting as consultant to CNBC): A full Great Crested Newt survey is not required in this instance. This is based on the assessment that the development is likely to pose only a minor short-term threat to newts, if they were to be present, and that this risk could be reduced by the implementation of simple avoidance measures.

7. VIEWS OF THE PARISH COUNCIL:

No comments received

8. OTHER REPRESENTATIONS:

Letters of support have been received from the occupiers of Oaklea Farm, Wybunbury Lane & Nut Tree Farm, Wybunbury Lane raising the following points:

- Means for competitive sport for young people should be encouraged;

- The development will not affect the character of the area providing that there are no additional floodlights and access is not taken from Wybunbury Lane;
- Vehicular access should be taken via Newcastle Road;
- The proposal would bring a facility which could be enjoyed by all walks of life and would be a benefit to the community;
- The facility will keep young people fit and reduce obesity.

An additional letter of support has been received from the Crewe and Nantwich Rugby Union Development Forum which raises the following points;

- The membership of the CNRUFC Juniors and Seniors has outgrown the clubs current playing facilities. The juniors have teams right the way through from under 7s to under 18s (approximately 250 local young people) and the seniors have 4 teams (approximately 85 local adults). Currently there are only 2 pitches for these teams.
- These teams regularly train at the clubs facilities but have had to look for other training facilities to preserve the pitches such as using Reaseheath College, Nantwich Town FC and Brine Leas High School.
- Many volunteers have contributed to the clubs progress and there are approximately 35 volunteers with the juniors and approximately 20 volunteers with the seniors.
- There are a number of local groups and organisations that also use or would like to use the rugby union clubs facilities: primary school rugby festivals, high school rugby leagues, colleges and university games, rugby league club and council projects such as the Cheshire Youth Games.
- The purchase of more land is essential for the club and many other groups to provide better quality activities all on one site, as well as providing even more opportunities for local people.
- Furthermore, purchase of more land is central to the future development of rugby in the local area including providing opportunities for girls and ladies rugby.

Letters of objection have been received from the occupiers The Spirrals, Stapeley House, Sunnyside & Privet Cottage Wybunbury Lane and Haymoor Green Farm raising the following points:

- Loss of agricultural land
- Impact upon the open countryside;
- A sequential test is required to consider alternative sites;
- The application is invalid;
- The application does not provide sufficient detail;
- The applications does not indicate how the site is to be set out;
- Impact upon surrounding properties and other countryside users through increased noise and an acoustic survey will be carried out;
- Local residents have seen Great Crested Newts in the area and a full survey with adequate mitigation measures will be required;
- Impact upon Haymoor Green Farm which is a Grade II listed property;
- Residents continue to suffer unauthorised developments of the adjacent caravan storage and overnight parking facility;
- Light pollution;
- Impact upon residential amenity;
- Existing light and noise pollution from the Vagrants would be increased;
- Flooding/drainage;
- Vehicular parking along Wybunbury Lane;
- Further urbanisation of Wybunbury Lane which is under threat from an unauthorised caravan development;
- The development could be used by others for a precedent if further development is approved;
- The Club should approach other land owners and consider a less sensitive site;

- Inaccuracies in the applicants habitat survey.

An additional letter of objection has been received on behalf of the occupiers The Spirrals, in relation to the Committee Report presented at the last committee meeting. This letter raises the following points:

- The Environmental Health Officer appears to accept that, based upon World Health Organisation Community Noise Levels, the noise level experienced at The Spirrals in relation to the present Rugby Club use is in the category of "moderate annoyance". The existing use at its nearest point is more than 150 metres away from The Spirrals. To conclude that the proposed use (being 20 metres away at the nearest point) will not increase the level of annoyance is clearly perverse.

- In view of the concerns raised by the acoustic consultant's report surely it is incumbent on the applicant to produce evidence to demonstrate that noise levels generated by the proposed use will not lead to greater levels of annoyance or indeed complaints of statutory noise nuisance. The Council should be carrying out its own readings to satisfy itself that it has reached the correct conclusion.

- The proposed times of use represent an increase in use of the proposed rugby pitches from that previously approved on the expired consents. The times imposed on these expired consents (Saturdays and Sundays only between 9 a.m. and 4.30 p.m.) were imposed to protect the amenity of neighbouring residents following careful consideration of the Planning Committee back in 2000. For the Officer to now accept and recommend such a substantial change to the proposed times (basically any time during daylight hours throughout the year) and to justify it on the grounds that the Environmental Health Officer was not consulted on previous applications is not acceptable. The applicants have made it clear that they intend to extend and intensify the use of the Club's facilities. To effectively give them unrestricted use cannot be reasonably justified and no attempt has indeed been made to do this. It will result in the residents suffering from continuous disturbance from the proposed use during daylight hours all year round.

- The use of the existing facilities has given rise to complaints both direct to the Club and more recently to the Council's Environmental Health and Planning Enforcement Officers. As far as the residents are aware, these complaints remain unresolved. Floodlighting in respect of the existing use is persistently operated beyond the time limits referred to in the conditions attached to the existing consents. This already leads to regular noise disturbance well into the night. Again it seems perverse for the Council to consider granting consent for an extension and indeed an intensification of the Rugby use without resolving existing ongoing problems.

- The Planning Officer's conclusion that the noise impact on neighbouring residents is likely to be "intermittent and minor" is unfounded and misleading given that *there are a number of local groups and organisations that also use or would like to use the rugby union clubs facilities as stated in the Committee Report.*

- The proposed planning conditions relating to the laying out of pitches and landscaping do not enable further public consultation on these important issues. Given the concerns raised by the residents, this is clearly an unsatisfactory situation. Whatever is proposed should therefore be fully considered prior to determining this planning application. The previously submitted hand sketched drawing with no scaling is totally inadequate for this purpose.

- There are continuing concerns that the Committee is considering a proposal supported by inadequate information for what has become a major project which is being actively supported

by the Council. This is clearly unsatisfactory and could lead people to conclude complicity and thereby make any decision challengeable.

A further letter has been received from Planning and Law Ltd. This letter is not to supplement the objections already made but to consider whether the application has been lawfully handled. The letter relates to two aspects of the application;

- Ecological surveys and in particular issues relating to the presence or otherwise of Great Crested Newts
- Acoustic Survey Work and the issue of impact of noise on residential amenity and potential nuisance

One local resident has commissioned a separate Great Crested Newt Pond Appraisal which concludes that a full protected species survey will be required for the following reasons;

- The physical characteristics of ponds 1 & 2 indicated that the ponds potentially offer Great Crested Newts a suitable aquatic habitat;
- The presence of Great Crested Newts (GCN) at 'The Spirrals' was supported by;
- The presence of an adult smooth newt (smooth newts are often associated with GCN)
- The presence of sub-adult common frog and toad indicating a likelihood of successful amphibian breeding
- The availability and extent of good terrestrial foraging, shelter and dispersal habitat neighbouring the ponds
- The significant number of ponds within 500 metres of 'The Spirrals'
- The known presence of GCN in the wider area
- It is considered that to reliably establish the presence likely absence of GCN within ponds 1 and 2, a full GCN survey should be undertaken on both ponds at the appropriate time of year.

One local resident has commissioned 2 Noise Assessment's in relation to this application and this concludes that;

- The desirable external level of 50dB LAeq is likely to be exceeded if the sports activities occur at the extended site, opposite The Spirrals as proposed – Predicted levels 52 - 63 dB. Allowing for a 15dB reduction in open windows the 'reasonable' internal levels for bedrooms are likely to be exceeded. If activities at the sports club are doubled this could increase noise levels produced by these activities by up to 3dB, increasing current levels to between 55-66dB
- The expected wide range of noise levels produced by these activities depend on the number of games being played, how vociferous the participants are, the frequency of the whistle use, impact noise, spectators and so on and this is reflected in the results of monitoring
- From BS4142 the rating level is estimated to range between +9 and +25dB above the measured background noise level at 'The Spirrals'. From BS4142 this indicates a difference ranged between 'Above Marginal Significance' and 'Indicates that Complaints are Likely'
- WHO Guidelines - current levels suggest that the proposed extension is likely to cause a moderate to serious annoyance to the community in regard to outdoor living areas
- From the above criteria the proposed extension to the Crewe Vagrants site and the activities on this site are likely to result in annoyance to the rural community in this area, indicating that complaints are likely (also above marginal significance at times) and are likely to exceed desirable external and internal domestic noise levels.
- Noise levels at the Spirrals are likely to be around 10 dBA + lower than the levels from sporting activities at around the low to mid 40dB's – L90. Levels from the activities themselves are likely to range from the low to high 50 dB's to mid 60 dB's.

- It is considered that much of the noise from the proposed boundary would be above background noise levels in the area; in addition the character of the “sporting” noise is markedly different from the background noise. Consequently noise from the facility would be clearly audible.
- Noise with information (speech, songs, warning sounds and so on) more distracting than noise with little or no information (waves sound, wind in trees, traffic, boiler-house noise and so on). Most of the noise from this site is human speech with high information content, because the shouts between players are specifically to attract attention (of other players) but would naturally also tend to attract the attention of nonparticipants. The Spirrals faces directly onto the playing fields; therefore, residents would be most likely to be exposed to the noise in their gardens during summer evenings and weekends, i.e. out of doors. The level at which people speak is generally taken as 55 to 65 dBA.
- In addition, if the pitch is used by adults some of the shouts and calls do contain foul and abusive language. From my observations I consider that such language is commonplace when used by adults and appears to be part of the enjoyment of the participants, i.e. it is not likely that participants could be dissuaded from using such language and/or shouting to each other if unsupervised. In summary I consider that noise from the site, as proposed, could cause disturbance to the Spirrals and other residents, especially as it used primarily by adults.

9. APPLICANT’S SUPPORTING INFORMATION

Phase 1 Habitat Survey

- The habitats within the site are considered to be of only very local nature conservation value, with species present being common and typical of their type. The areas of some nature conservation in comparison were limited to the scrub and trees around the perimeter. If the redevelopment of the site retained much of the boundary vegetation the works would only therefore result in the loss of improved grassland of negligible conservation value;
- Any new proposed planting, should look to include a higher proportion of native species, of a local provenance, and/or selecting ornamental species that provide known benefits to wildlife as fruit and nectar sources;
- The Oak trees along the western boundary have medium potential for bats. It is recommended that any existing trees and shrubs within the site are retained within the development, (where feasible), as these can provide established foraging and roosting/nesting sites for bats and other wildlife as well as providing stepping stone habitats in to the wider area;
- In terms of nesting birds; any vegetation clearance should be undertaken outside of the bird breeding season (March to September inclusive);
- The ditches are considered unsuitable for water vole due to the lack of vegetation and degree of over shading of bank-side hedgerow/trees. Water voles are therefore not likely to pose any constraints to the development at this time;
- The terrestrial habitat within the site and the surrounding fields offered very limited suitable great crested newt habitat. Great crested newts are therefore not considered to pose any constraints to the redevelopment of the site at this time;
- The habitats on site are not considered suitable in supporting reptile species. The main body of the site was homogenous in structure providing limited varied vegetation for basking, foraging and cover. Reptiles are not considered to pose any constraints to the redevelopment of the site.

The applicant’s ecologist has also responded to the comments made in the letter of representation regarding the procedural issues of the survey.

10. OFFICER APPRAISAL

Principal of Development

The site is located within the open countryside and Policy NE.2 allows development which is amongst other things essential for recreation. Policy RT.6 (Recreational Uses in the Open Countryside) allows development providing that it meets a number of requirements including that it does not harm the character or appearance of the countryside. In this instance the applicant has indicated that an extension in the number of rugby pitches is required due to growing numbers of members at the Rugby Club. The requirement for the use is accepted and given that Government Policy aims to support sport, general health and well-being the proposed use is considered to be acceptable and complies with Local, Regional and National Policies subject to an assessment upon the impact upon residential amenity, highways, the character and appearance of the area and the other issues addressed below.

Amenity

The site is located within close proximity to a number of residential properties with the nearest being The Spirals which is approximately 20 metres to the south of the site on the opposite side of Wybunbury Lane. Careful consideration therefore needs to be given to the impact of the proposals upon the residential amenities of The Spirals and other surrounding residential properties.

As no external lighting is proposed the use of the site will be limited to daylight hours only and the applicants have suggested the following hours of use which are linked to daylight hours throughout the year; April – September 09.00 – 20.30; November – February 09.00 – 17.00 and March and October 09.00 – 18.30.

In terms of noise from recreational and sporting activities PPG24 (Planning and Noise) states that the local planning authority will have to take account of how frequently the noise will be generated and how disturbing it will be, and balance the enjoyment of the participants against nuisance to other people. The existing rugby pitches are not restricted by any hours of operation condition and the only restrictive condition relates to the use of the floodlights (between 8am and 10pm and on 2 days a week only). As a result the proposed hours of operation condition is more restrictive than those conditions currently in place on the existing rugby pitches.

It is accepted that two previous applications for the use of the application site as rugby pitches (which have now expired) were restricted to use on Saturdays and Sundays between the hours of 9am and 4.30pm only. In response to this Environmental Health were not consulted as part of the 2 previous applications and following consultation they have raised no objection to this application. Furthermore given the government emphasis on improving general health and well being it is considered that the proposed hours of use are acceptable.

The use of the land as rugby pitches is likely to lead to noises such as shouting and limited cheering which can have an impact on neighbouring amenity. However this impact is likely to be intermittent and minor in its impact due to the local nature of the games taking place, the timing of the competitive matches/training (matches mainly at weekends and training mainly at weeknights) and the distance to the nearest residential property which is approximately 20 metres. Furthermore there have been no complaints to the Council's Environmental Health Department regarding noise from the existing rugby pitches prior to the submission of this application and the Environmental Health Officer has raised no objection to the application subject to the imposition of a condition restricting the hours of operation at the site. Given these

comments a full acoustic assessment of the site will not be required. The proposals are therefore unlikely to have a significant impact on neighbouring amenity that would warrant the refusal of this planning application. Furthermore, the points raised by the Council's Environmental Health Department in relation to the resident's noise survey are accepted and it is not considered that the proposed change of use would result such a significant increase in noise levels that would warrant the refusal of this planning application.

In order to address concerns of rugby balls crossing the southern boundary line onto Wybunbury Lane or The Spirals a condition will be attached to ensure that the layout of the pitches is agreed in writing prior to the first use of the site.

Impact upon the Character and Appearance of the Open Countryside

The application site is improved grassland which is bound by hedgerows and trees of varying quality. The proposed development is for the change of use of the land to rugby pitches only with no associated buildings or floodlighting. The alterations to the character and appearance of the site would therefore be limited to the laying out of the rugby pitches and the associated rugby posts.

All trees/hedgerow will be retained without the need for pruning apart from a small section to the northern boundary of the site where access to the site would be gained. Given that the site is well screened on all sides and the only works would be limited to the laying out of rugby pitches and the associated rugby posts, the proposal would have minimal impact upon the character and appearance of the open countryside. This view is supported by PPS7 which states that 'Planning policies should provide a positive framework for facilitating sustainable development that supports traditional land-based activities and makes the most of new leisure and recreational opportunities that require a countryside location'. PPG17 states that in countryside around towns 'local authorities should encourage the creation of sports and recreational facilities'.

Impact upon Listed Buildings

Haymoor Green Farm is a Grade II Listed Building which is located over 200 metres to the south of the application site. Given this separation distance and due to the fact that the application is for change of use only, it is not considered that the proposal will have a detrimental impact upon the character and setting of Haymoor Green Farm or any other listed buildings.

Highways

The proposed rugby pitches would be accessed via the existing access at the Crewe Vagrants. The Highway Authority has raised no objection to this access point and it is also considered that the proposal would raise no parking issues since there are sufficient existing spaces.

Protected Species (Addendum)

This addendum is written to supplement the committee report and update reports for application P09/0095 in relation to protected species and to inform the decision as to whether planning permission should be granted.

Great Crested Newts are protected under the EC habitats Directive. The directive is then implemented by the Conservation (Natural Habitats etc) Regulations 1994. The most pertinent

and direct guidance is given by ODPM Circular 06/05 which accompanies and is complementary to PPS9.

Paragraph 98 of Circular 06/05 states that protected species are a material planning consideration and Paragraph 99 states that it is essential that the extent that protected species may be affected should be established before planning permission is granted. However paragraph 99 also states that *'bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development'*. A survey was requested from the applicant in order to ascertain whether there was any reasonable likelihood of Great Crested Newts being present because of the habitat offered by the area surrounding the development site.

In this instance following the consideration of both surveys it is not considered that there is a reasonable likelihood of Great Crested Newts being both present and affected by the development as required by Paragraph 99 of Circular 06/05.

Both Ecologists (Peake Ecology & CES Ecology) would agree that there are certain characteristics of the surrounding ponds which mean that none of the ponds can be considered optimal for the use of breeding habitat for GCN. The field is also isolated from some of the ponds by Wybunbury Lane and a steep sided ditch runs along the Lane which would reduce the habitat connectivity between the ponds and the development site.

The development site is of an agriculturally improved nature and lacks any features which would make it important to GCN for the purposes of shelter or hibernation.

The proposed development is therefore unlikely to result in an offence under Regulation 39 which states that it is an offence to:

- Deliberately capture or kill a great crested newt [Regulation 39(1)(a)]
- Deliberately disturb a great crested newt [Regulation 39(1)(b)]
- Deliberately take or destroy the eggs of a great crested newt [Regulation 39(1)(c)]
- Damage or destroy a breeding site or resting place of a great crested newt [Regulation 39(1)(d)]

The above offences dictate whether a licence is required and no licence is required if on balance the, the proposed activity is unlikely to result in an offence. However the decision on whether to apply for a licence must be made by the applicant (via their ecologist).

The letter of objection refers to the case *R v Cornwall County Council ex parte Jill Hardy*. This concludes where a development poses a likely risk of harm to a protected species, then local planning authorities should ensure that an adequate survey is carried out in advance of a planning application. However it is not considered in this case that a likely risk of harm would arise from this proposed development.

Given the characteristics of the application site and the findings of the applicant's Habitat Survey it is considered that there is not a reasonable likelihood of GCN being present and affected by the development. As part of the update report a condition for Great Crested Newt Mitigation Measures was suggested and the update report stated that *'In terms of the mitigation measures for Great Crested Newts the case officer has contacted Natural England who has confirmed that it will not be necessary to determine the population size of GCN and that the mitigation measures could be based on the worst case scenario'*. This element of the update

report and the use of the mitigation condition imply that GCN are present on the site and that the requirements of A16 (1) could be met. However this is not the case due to the characteristics of the application site, the comments from the LPA Ecologist and the findings of the applicants Habitat Survey which all lead to the conclusion that there is no reasonable likelihood of GCN being present and affected by the development. The use of the mitigation measures condition applies to the use of Reasonable Avoidance Measures as suggested by the LA Ecologist and Natural England. The Reasonable Avoidance Measures (RAM) condition is required as a precautionary measure as it is unlikely that GCN will be affected by the proposed development,

Although the use of the RAM condition is precautionary it assumes that the requirements of A16 (1) are met, and as a result an assessment of the requirements of A16 (1) will be required. This element of the European Directive states that providing that there is no satisfactory alternative the derogation is not detrimental to the maintenance of the populations of the species concerned at a status in their natural range, Member states may derogate from the provisions of Articles 12, 13, 14, and 15 (a) and (b): 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. This effectively gives 3 tests which have been met in the following way;

- There are no satisfactory alternatives as the land which surrounds the Rugby Club is similar in nature and characteristics to the application site. Furthermore the application site benefits from some surrounding barriers (Wybunbury Lane and the flowing drains) which reduce habitat connectivity.
- The derogation is not detrimental to the maintenance of GCN populations. This requirement has been met in the assessment of the site by the applicant's ecologist in the habitat assessment and the assessment of the condition of the site as not being suitable habitat for GCN
- There are imperative social reasons of overriding public interest. This is set out in the supporting information provided by the representation from Crewe and Nantwich Rugby Union Development Forum which refers to the fact that the Rugby Club has outgrown its current facilities which comprises of 2 pitches for 250 local young people and 85 adults, with other local schools and clubs wanting to use the existing pitches.

PPS1: Delivering Sustainable Development, in line with Section 38(6) of the Planning & Compulsory Purchase Act 2004, states that *"where the development plan contains the relevant policies, applications for planning permission would be determined in line with the plan, unless material considerations indicate otherwise"*. PPS9: Biodiversity and Geological Conservation states that *"in taking decisions, local planning authorities should ensure that appropriate weight is attached to...protected species"*. PPS7: Sustainable Development in Rural Areas seeks to promote recreation in and the enjoyment of the countryside, whilst conserving wildlife in accordance with statutory designations.

Local Plan Policy NE.2 (Open Countryside) considers outdoor recreational uses as an appropriate use within rural areas, whilst Policy RT.6 (Recreational Uses in the Open Countryside) also confirms that such uses would be permitted subject to a number of criteria including that the proposal does not harm the character of the countryside or nature conservation, to which the proposed development accords. The Policy justification to Policy NE.5 (Nature Conservation and Habitats) states that wildlife habitats should be conserved wherever possible and that a licence from DEFRA will be required where the proposal would involve the capture, disturbance, damage, or destruction of a European Protected Species or its breeding or resting place. Policy NE.9 (Protected Species) states that development will not be permitted where it would have an adverse impact upon protected species. Given the

conclusions of the Habitat Survey, consultation responses from the LA Ecologist and Natural England, and that the proposed development would satisfy the three tests as set out above there would not be a detrimental impact on Great Crested Newts.

Considerable weight has been given to assessing the likely impact that the proposed development would have on Great Crested Newts which are a European Protected Species, protected under the EC Habitats Directive. The proposed development would not result in the reasonable likelihood of GCN being present and affected as identified by paragraph 99 of Circular 06/05, and the use of a Reasonable Avoidance Measures condition as a precautionary measure would not conflict with the 3 tests required by A (16) of the EC directive. As summarised above, and in the rest of the Committee Report, it is considered that the proposed development, as conditioned, is in line with policies contained within the Development Plan for the area and National Planning Guidance.

Trees

A number of trees surround the site to the northern, southern and western boundaries. These trees are an important feature and are proposed to be retained as part of this application. The only works which may occur would be pruning work to 2 trees to the northern boundary to give access onto the site. A condition will be attached to this permission to ensure that all trees are retained and any pruning works are first agreed in writing with the Local Planning Authority.

Other issues

One letter of representation refers to the loss of agricultural land and Policy NE.12 of the Local Plan applies. There is no evidence to suggest that the application site falls within Grades 1, 2 or 3A of the Ministry for Fisheries and Food Classification and consultation has been carried out with DEFRA in order to address this issue. In terms of the loss of agricultural land, DEFRA has not raised any comments on this application and given that there is no evidence to suggest that the application site falls within Grades 1, 2 or 3A of the Ministry for Fisheries and Food Classification it is considered that the proposed development is acceptable.

One letter of representation requests a sequential test to be carried out. However a sequential test is not required at any level of policy for playing pitch development and this is not considered to be necessary as part of this planning application.

Comments relating to the validity of this application and the lack of supporting information are not accepted and it is considered that the application is valid and the application has been submitted with sufficient information to allow its determination.

This application site lies adjacent to the site which relates to planning application P08/0509 for the change of use of land to use as a residential caravan site for 6 caravans, including construction of hardstanding, erection of fencing and provision of foul drainage. Limited weight should be given to this application as it differs significantly from that which is proposed as part of this application. Both applications will be dealt with under a different set of local, national and regional policies.

The submitted application has not included a plan indicating the layout of the pitches on the site and neither did the previous application where the orientation of the rugby pitches was controlled by condition. A plan has now been submitted which shows an indicative layout of the pitches and this shows that 2 pitches would be located within the site with a further training/junior pitch to the north of the site. No consultation has been carried out with reference

to this plan which is indicative only. Residents comments will have been made in relation to the whole site being used as rugby pitches and these will still be considered as part of this planning application. A condition will still be attached to ensure that the final layout of the pitches is agreed in writing.

11. CONCLUSIONS

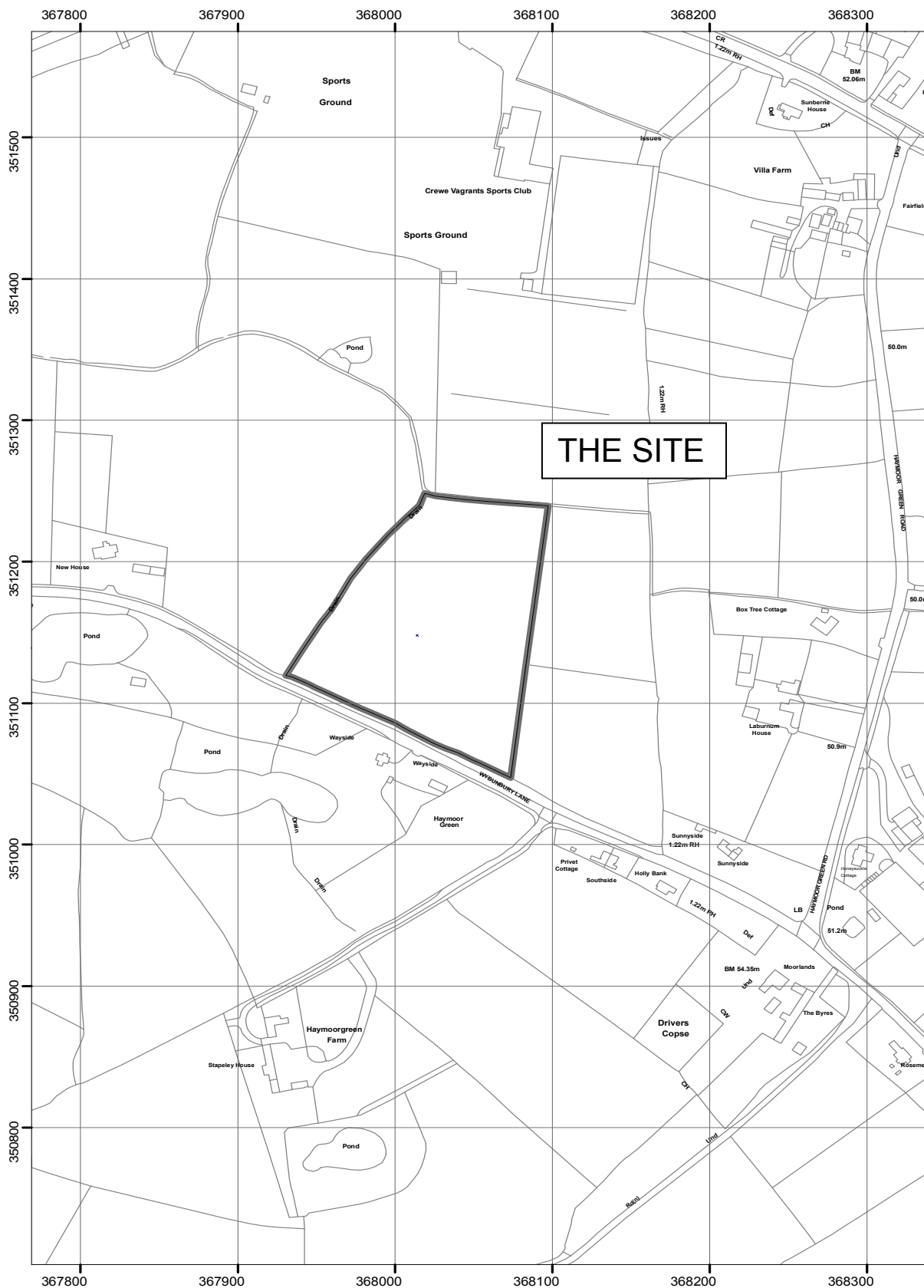
The proposal would result in the development of open countryside as Rugby Pitches. The proposal complies with local, regional and national planning policy and the principal of this use which supports sport, general health and well-being is considered to be acceptable. Given the scale of the use it is not considered that the proposal would have a detrimental impact upon neighbouring amenity through noise or in any other way. The proposal would not have a detrimental impact upon the character and appearance of the open countryside or impact upon protected species. Finally the access which is to be taken off Newcastle Road would not raise any highway safety/parking issues and the proposal is therefore recommended for approval subject to the conditions set out below.

12. RECOMMENDATIONS

APPROVE Conditions

- 1 Standard**
- 2 Layout of pitches to be agreed**
- 3 No floodlights**
- 4 Details of access/bridge link to be agreed**
- 5 Landscaping to be submitted**
- 6 Landscaping to be completed**
- 7 Hours of operation**
- 8 Works to be carried outside the bird breeding season unless the site is first checked by a suitably qualified ecologist**
- 9 Works to stop if protected species found**
- 10 Retention of trees all pruning to be agreed in writing with the LPA**
- 11 No vehicular access to be gained from Wybunbury Lane**
- 12 Reasonable Avoidance Measures - Great Crested Newts**

LOCATION PLAN:



P09/0095 – Land off Wybunbury Lane Stapeley Nantwich

N.G.R; - 368.027 351.152

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