



Strategic Planning Board Report

Planning Reference No:	09/4017N
Application Address:	92 London Road, Stapeley, Nantwich
Proposal:	Construction of Two Newt Mitigation Areas and Associated Corridors
Applicant:	Mr R Adams, NJL Consulting, Adamson House, Towers Business Park, Wilmslow Road, Didsbury, Manchester
Application Type:	Full Application
Grid Reference:	366316 351258
Ward:	Doddington
Earliest Determination Date:	24 th February 2010
Expiry Dated:	8 th April 2010
Date Report Prepared:	9 th March 2010
Constraints:	Open Countryside

SUMMARY RECOMMENDATION:

1. Approve alterations to recommendation for outline application P06/1001 in relation to a variation to the section 106 agreement.
2. Approve with conditions.

MAIN ISSUES:

Appropriateness of the proposed ecological mitigation works in relation to the development of Stapeley Water Gardens for a mixed use development.
Impact on the character and appearance of the open countryside.

1. REASON FOR REFERRAL

The application is referred to the Strategic Planning Board because the size of the application area is approximately 5 hectares.

2. DESCRIPTION OF SITE AND CONTEXT

An outline planning application for the redevelopment of the Stapeley Water Gardens and associated land was submitted under reference P06/1001 in August 2006 and was approved subject to the completion of a Section 106

agreement in September 2007. An Ecological Mitigation Design Strategy (EMDS) was submitted and approved in principle as part of the outline submission. That Strategy requires a number of measures to be implemented to mitigate the effects of the development on wildlife in the area. This application seeks full planning permission for these ecological mitigation works.

The Stapeley Water Gardens development site (outline application area) is located to the south of Peter Destaplegh Way and west of London Road, Stapeley and includes the land and buildings which form Stapeley Water Gardens, the site of the former Stapeley Manor which was demolished following a fire, and adjacent fields.

The newt mitigation application area consists of two parcels of land to the south east and south west of the outline application area, identified as Area A to the south west and Area B to the south east. In addition areas of wildlife corridor/ green link are also included in the application area. The site for the ecological mitigation works is therefore located largely in open countryside outside of the area allocated for the redevelopment of the Stapeley Water Gardens in the Borough of Crewe and Nantwich Replacement Local Plan, although certain corridor areas are within the allocation. The parcels of land which form Areas A and B are level grass fields. A number of the mature trees around the site of Stapeley Manor are included in a Tree Preservation Order.

3. DETAILS OF PROPOSAL

The application is for the construction of ponds to create Great Crested Newt mitigation ponds, related terrestrial and aquatic habitats and the provision of bat and bird nest boxes.

Following receipt of the original plans negotiations resulted in the submission of amended plans and information which provide for 11 ponds (seven in Area A and four in Area B) each one including two areas of shallows within the ponds to separate the deeper water areas. The ponds are set within areas of damp neutral grassland. Around the edges of each mitigation area and outside of the grassland will be native understorey with tree planting. Where hedges and trees are present these will be retained and the retained trees and hedges combined with the new planting will form habitat corridors on average 15m wide.

Areas A and B will be linked by a 15m wide habitat linkage. There is a raised reservoir within this land at present which will be removed and replaced with a similar water body in a modified position to provide a pond between the main areas of ponds.

To the north of the Stapeley Water Gardens development area land on the south side of Peter Destaplegh Way has been planted as a requirement for the Cronkinson Farm development and this will be retained but will also serve to provide wildlife linkages between the two areas. The land on the south side of Peter Destaplegh Way is excluded from this planning application area for the newt mitigation. However the newt mitigation planning application area does include existing mature trees on the east, south and west sides of the

land previously occupied by Stapeley Manor. These trees will form linkages between the planting on the south side of Peter Destapleigh Way and Area B. In addition a 10m corridor will be provided to link from the retained trees on the south side of Stapeley Manor to Area B.

These areas extend as follows:

Area A	2.055 ha
Area B	1.570 ha
Southern link between Areas A and B	0.388 ha
Areas to the east, south and west of Stapeley Manor	1.059 ha
Linkage between Stapeley Manor and Area B	0.070 ha
TOTAL	5.142 ha

The proposals also include three amphibian tunnels to provide links for wildlife under roads. These will be provided at the point where the corridor linking Area B and Stapeley Manor crosses the access road to Stapeley Water Gardens, at the point where vehicular access will be provided for the future residential development through the trees on the southern side of Stapeley Manor and a further tunnel (outside of this application area) to be provided where vehicular access is taken from Peter Destapleigh Way. (The outline application includes access from Peter Destapleigh Way to serve the relocated Water Gardens and new B1 office development and a second access from London Road on the line of the existing Stapeley Water Gardens will provide the new access to the residential development.) There is an existing amphibian tunnel under Peter Destapleigh Way which is unaffected by the Stapeley development.

Amphibian refugia (habitat areas) will be provided in Areas A and B.

4. RELEVANT HISTORY

P06/1001 Outline application for redevelopment and relocation of the existing garden centre facilities, A1 and A3 retail units, construction of Class C3 residential development, B1 office development, car parking, and ancillary facilities and infrastructure. Approved subject to signing of S106 agreement and with conditions. Note: Section 106 agreement not yet signed and therefore the outline permission has not yet been issued (as at March 2010).

5. POLICIES

North West of England Plan Regional Spatial Strategy to 2021

DP1 Spatial Principles

DP2 Promote Sustainable Communities

DP7 Promote Environmental Quality

EM1 Integrated Enhancement and Protection of the Region's Environmental Assets especially policy EM1(B) Natural Environment

EM3 Green Infrastructure

Borough of Crewe and Nantwich Replacement Local Plan 2011

NE.2 Open Countryside

NE.5 Nature Conservation and Habitats

NE.9 Protected Species

BE.1 Amenity

BE.2 Design

BE.3 Access and Parking

S.12.5 Mixed Use Regeneration Sites – Stapeley Water Gardens (adjacent to the mitigation application area).

Other Material Considerations

Borough of Crewe and Nantwich LDF Supplementary Planning Document
Stapeley Water Gardens Adopted Development Brief, adopted 27th July 2006

PPS1: Delivering Sustainable Development

PPS3: Housing

PPS4: Planning for Sustainable Economic Growth

PPS9: Biodiversity and Geological Conservation.

6. CONSULTATIONS

Environment Agency: No objections but request an informative to explain that a licence may be required. Pond construction should not compromise existing areas of biodiversity interest.

Environmental Health: No objections to this application.

Ecology: The revised submission adequately addresses the following previously raised concerns:

- The provision of a 15m habitat/landscape buffer linking ecological mitigation areas A and B.
- The reduction in size and increased separation of the proposed ponds by means of wetland scrape areas.
- The provision of ponds in the north west of Area A.
- The provision of an additional pond within the 15m habitat/landscape buffer to increase connectivity between areas A and B.
- The indicative locations of the proposed hibernacula.
- The retention of the 'casting pond'.
- Location of the required amphibian tunnels.
- The submission of acceptable indicative cross sections for the ponds and bunds.

It is advised that the following additional information is required in respect of this application, which could be secured by means of condition:

- Provision for nesting birds particularly those BAP species recorded on site.
- Details of an increased level of bat box provision including; number, type and location of proposed boxes.

The issue of the total area of habitat proposed is also raised. The Ecological Mitigation Design Statement (EMDS) submitted with the outline application specified 3.9 ha. The current scheme, which does not include the 'green link' (habitat corridor) adjacent to the proposed access road or the 'green link' between the housing and

Water Gardens shown on the EMDS, appears to offer 3.77 ha. In addition the further mitigation details provided by PC Associates Ltd appears to indicate that only a 10m habitat/landscape strip will be provided which is contradictory to the revised plans submitted.

It should be noted that since a European Protected Species (Great Crested Newts) has been recorded on site and is likely to be adversely affected by the proposed development, in addition to agreeing appropriate mitigation/compensation the planning authority must consider the tests prescribed by the Habitat Regulations.

In the absence of mitigation the proposed development would result in a substantial adverse impact upon a significant population of Great Crested Newts through the loss of terrestrial habitat breeding habitat and would also pose a significant risk of killing/injuring a significant number of individual animals. However an acceptable methodology has been proposed to reduce the risk of killing and injuring animals during the demolition/construction phase and subject to the resolution of the outstanding issues detailed above, the proposed habitat creation scheme is likely to maintain the existing population.

Conditions in relation to the protection of breeding birds and the submission of a management plan are also recommended.

Landscape: Offer the following comments:

- The pond sections submitted are indicative but do give a reasonable representation of the pond sides. There should be no trees planted closer than 5m from the pond edges in order to limit the amount of leaf litter falling into the ponds.
- Recommend conditions regarding no felling or works to trees within corridors or Areas A and B without the prior written approval of the LPA, and for a landscape scheme to be submitted.
- Previous comments about the lack of information regarding the removal of banked land on the southern boundary to facilitate the removal of the reservoir and creation of the 15m buffer together with a new pond is still not addressed. Any change of levels should be noted on plan and cross sections submitted to show proposed ground levels and pond. There should also be a clarification of where spoil will be sited.
- Previous comments included for management plans to state a schedule for removal of self-set tree and shrub saplings from within the 5m margin of any pond. A phasing plan and timetable for implementation is also required.
- Bat boxes sited in mature trees within the hedge line of Area A would be successful in increasing the bat roosting opportunities in the local area.

SUSTRANS: Would like to see the ponds and habitat creation to the north of the south western mitigation area to link with that mitigation provided for the Cronkinson Farm development.

Natural England: While previously Natural England has been involved with the ecological mitigation strategy for this scheme, they are not now in a position to provide such advice at the application stage. It is therefore considered that the Council's Ecologist should lead on any negotiations.

Cheshire Wildlife Trust: Wish to offer support to the objections raised in a representation by Mark Williams. As Mr Williams points out, if an Ecological Mitigation Design Strategy has already been approved, then it is reasonable to expect

that plans submitted with the application take this design into account and make provision for its implementation.

7. VIEWS OF THE PARISH COUNCIL:

No objections.

8. OTHER REPRESENTATIONS:

Letters of objection to the original details from 8 Mill Way, 1, 16, 19 Bishops Wood, Nantwich; 118, 128, 144, 146, 148, 150, 152 London Road Stapeley; Cranfield University Bedfordshire

Grounds of objection in relation to the development of the mixed use site for housing, the relocated Water Gardens and offices are not relevant to this application and not included here.

The grounds of objection in relation to the original plans and details, where relevant to the newt mitigation application can be summarised as follows:-

- The proposals do not comply with the Ecological Mitigation Design Strategy submitted with the outline application previously.
- The green buffer around the western and southern mitigation areas shown in the Ecological Mitigation Strategy is not proposed in the application.
- The edges of the field includes hedges ditches woodland and cluster ponds but none of these are included in the submitted drawings
- There is a lack of ponds in the northern part of Area A. This would enhance connectivity between the proposed mitigation and the existing mitigation provided in relation to the Cronkinson Farm development site.
- Inadequate configuration of the 10m wide landscaped corridor. This was not what Natural England originally asked for. Natural England sought a corridor of 15m width.
- The existing reservoir on the southern site boundary occupies most of the linking corridor for its extent on the southern site boundary between areas A and B and in its existing form does not allow these two areas to be linked.
- Further the reservoir banks are steep and cannot be planted.
- The corridor should be diverted around the reservoir to compensate for the area lost.
- The landscaped corridor should be 15m wide to assist with screening the development from existing dwellings as well as for habitat connectivity.
- There is no planting schedule to show what is proposed and quantities.
- There is no tree survey.
- There are no proposals for native tree and shrub planting.
- The ponds do not comply with the Drainage strategy submitted with the outline application which included reed beds and ponds/ wetlands within the south eastern mitigation area. The applicant should be required to demonstrate how the surface water drainage scheme will work.
- The development should also ensure that the Great Crested Newt Mitigation works provided in relation to the Cronkinson Farm development are safeguarded.

Further objections have been received in relation to the amended plans and details from:- 114, 128, 134, 144, 146, 148, 150 London Road, Stapeley, Cranfield University Bedfordshire.

The grounds of objection to the revised plan are summarised below:-

- Object to the lack of habitat corridor/ green buffer/ landscape strip between Area A and Peter Destapleigh Way. This is present in the Ecological Design Strategy and also the zone plan for the outline application and should be included in the submission. It is essential to provide connectivity with the Cronkinson Farm mitigation area to the west. Without this the connectivity is nil.
- If there is a problem with the width of this habitat corridor it could be tapered at the northern end to allow for construction of the road.
- The amended plans for Area A do not specify that the widths of the habitat corridors on the western and southern boundary are 15m wide.
- Object to the lack of information in relation to quantities and numbers of trees and shrubs to be provided. Full details should be submitted prior to the determination of the application.
- Object to the fact that the mature trees on the western boundary of Area A (shown on tree survey submitted with application P06/1001) are not shown on the amended plans.
- Revised plans to show the spread of the tree canopies and protective fencing to both Areas A and B should be included.

9. APPLICANT'S SUPPORTING INFORMATION:

Great Crested Newt Mitigation Supplementary details in relation to the Proposed Mitigation and Enhancement Scheme: (Paul Chester Associates Ltd updated February 2010)

This document commences by taking the issues which the local authority had identified in the original submission as conflicting with the requirements of the Ecological Mitigation Design Strategy (EMDS) and explaining why a number of assumptions made at that time are now considered to limit or inhibit the success of the scheme. The following text is taken from the submission and the words underlined by the applicant's ecologist explain his reasoning:-

Pond Size – The EMDS refers to ponds being a minimum of 100m². Whilst this size of pond can be used by great crested newt, the species favours much larger ponds. This approach would therefore limit the size of the local great crested newt population in the future.

Pond Number – The EMDS refers to a target number of ponds based upon those lost i.e. a ratio of 3 ponds for every 2 lost. This is erroneous in that it is not the number of ponds which dictates the size and viability of a great crested newt population but the quality of the ponds as a breeding habitat (as well as the surrounding quality of terrestrial habitat).

Pond Area – The EMDS refers to a target area of water to be double that which is lost. Whilst a target area may be a useful indicator, it is again something of an arbitrary and erroneous statement. As with pond number, it is the quality of habitat which is available to great crested newts which is critical.

Pond Depth – The EMDS refers to a pond depth range of 1-1.5m. Whilst this may be an appropriate maximum depth target, optimum ponds need to have extensive shallower margins to support abundant egg-laying material.

Pond Connectivity – The EMDS refers to a maximum distance of 100m between clusters of ponds. There is no scientific basis for this requirement and the critical consideration in relation to the connectivity of aquatic habitats at this scale is the quality and connectivity of terrestrial habitats. Ponds are only relevant to this as steeping zones over large distances in habitats which support few ponds.

Sustainable Drainage Systems (SuDS) – The EMDS refers to SuDS being incorporated into the dedicated great crested newt mitigation areas. Whilst SuDS is an important development consideration, given the potential conflict between the use of ponds for SuDS and aquatic habitat creation for great crested newts, the newly created ponds should be dedicated conservation ponds.

Incorporation of great crested newt ponds into the new Stapeley Water Gardens – Whilst, it would seem inevitable that great crested newts will utilise habitats within the relocated garden centre, the most successful mitigation schemes for great crested newt provide dedicated conservation areas which do not serve dual purposes. Irrespective of any such use, it is considered essential that any mitigation strategy delivers maximum conservation benefits without any such reliance on the relocated Garden Centre to deliver such benefits.

Ponds within Habitat Corridors – The EMDS incorporates pond clusters along the 15m wide habitat corridor. Such ponds would serve little purpose. They would be too small in size and would inevitably quickly become totally shaded within the proposed woodland habitats.

15m wide corridor – The EMDS specifies a minimum 15m wide corridor in the south of the development. This is an erroneous figure and the functionality of any corridor for great crested newts or terrestrial habitat provision which such a corridor provides is a factor of the quality of the habitat as opposed to the width. That the EMDS acknowledges this is demonstrated in the use of a 10m wide corridor for the “Green Link”.

²¹In addition the following points are made:

- Amphibian surveys were completed in 2006 and 2009.
- In the 2009 survey 30 ponds were surveyed in the site and 3 ponds provided under the Cronkinson Farm mitigation were also surveyed.
- The 17 ponds in the display gardens show an atypical habitat with little or no vegetation, concrete linings and provide little or no breeding potential.
- The surveys showed that 17 ponds in the display gardens often found only a single Great Crested Newt in a pond.
- In the 2009 survey the majority of GCN (81%) were found in four ponds; the highest population was found in the one pond located close to the access road (pond 23) to the existing Water Gardens. Two other ponds on land to the west of the Stapeley Development site (ie the Cronkinson Farm mitigation ponds) yielded higher counts as did the casting pond which will be retained.
- Pond 23 was considered to have a higher population because of the diverse marginal planting around the edge compared with other ponds and the fact that it receives less disturbance.
- Whilst the EMDS requires an increase in number of ponds provided, it is the quality of the habitat which will influence the success of the mitigation not the outright number of ponds.
- Stapeley Water Gardens is an atypical habitat and the majority of ponds have little or no value to Great Crested Newts.
- It is not therefore considered necessary to replace ponds on a number basis. As a species Great Crested Newts favour medium to larger ponds not smaller ponds and this is demonstrated in the research on Habitat Suitability Index (HSI) by Oldham, Keeble Swan and Jeffcote in 2000.
- The HSI is now a mandatory requirement for Great Crested Newt licence applications and measures the quality of the habitat where 0 is of poor habitat and 1 is the optimal habitat.
- The HSI shows the optimal size for ponds to be 500-800 sq m not the sizes specified in the EMDS. Ponds of 100 sq m as specified in the EMDS would only score 0.2 on the HSI.
- National research also supports the larger sized ponds for habitats for Great Crested Newts. All the large populations of Great Crested Newts on Special Areas of Conservation found nationally occupied in large sized ponds.
- The mitigation scheme has been drawn up with reference to the need to balance the amount of aquatic habitats with terrestrial habitat and also with regard to areas of aquatic habitat being lost.
- The proposal is therefore for two large clusters of ponds connected by a corridor with one larger pond in it.
- There will be a loss of 0.23 ha of aquatic habitat and 0.77 ha of new habitat provided which represents a ratio of 3.34:1.
- The HSI has been used to design the new ponds so that all ponds will have an HSI of 0.8 or more.
- Maintenance will be in perpetuity as required by the licence.
- Whilst there will be other ponds provided in due course in the relocated Water Gardens the use by Great Crested Newts should not be encouraged since the desire to design these ponds to suit display needs is not necessarily amphibian friendly.
- The relocated Water Gardens will also include large areas of environments hostile to Newts whereas the mitigation ponds include planting specifically for a Newt friendly habitat.

²¹ Some 1.56 ha of terrestrial habitat will be provided in Area A and 1.29 ha in Area B.

- Terrestrial habitat will include planting with native species; top soil will be removed to the development site so that nutrient rich soils do not lead to inappropriate species.
- Newly created scrub and woodland planting will be provided immediately following the formation of ponds.
- All planting will use native species including ground flora and aquatics.
- 25 refugia will be established.

Stapeley Water Garden further detail in Relation to the Design of Great Crested Newt Mitigation (Paul Chester Associates dated March 2010)

- Each pond will be created to the optimum size as defined by the HSI i.e. c. 700m².
- Pond shape will be varied to maximise the shallow marginal habitats.
- Underwater bars and shoals will be included to benefit aquatic plants.
- The sloping edges of the pond will be shallow and always <1:5 in order to maximise marginal vegetation.
- Whilst natural generation in terms of vegetation establishment is often favoured, some plantings of aquatic species are proposed to speed establishment.
- All plantings will be of locally sourced native aquatic and marginal species favoured by great crested newts as egg-laying species and characteristic of high quality aquatic habitats generally.
- The plantings will be diverse so as to maximise the invertebrate assemblage and the foraging value to Great Crested Newts and other amphibians.
- Shading will be avoided.
- There will be no fish introduction.
- All pond creation measures will be completed under the ecological supervision.
- The ponds will not form part of any SuDS strategy.
- The ponds will be provided with two shallow bars which will create three interconnected ponds varying between 100 and 300 sq m with the overall ponds size being in the order of 700 sq m.
- The bars will provide additional egg laying opportunities in wetter years and maintain the optimum pond design required by the HSI.
- Area A is closer to the mitigation area provided for Cronkinson Farm and will therefore form links to that area
- It is considered that the formation of groups of small ponds to link Areas A and B would be impractical and lead to small sized ponds however one larger sized pond will still be provided in the linking corridor.
- Planting around the mitigation areas will bolster connectivity.
- Corridors will be planted to provide optimum habitats for Great Crested Newts and include native species with the retention of existing trees where present.
- It is not considered that the width of the corridor is critical to its success but the quality of habitat provided in it.

10. OFFICER APPRAISAL

Relationship to the Outline Planning Application

²¹This application for ecological mitigation works is submitted at this time prior to completion of the S106 Agreement and the grant of outline planning permission for the mixed use development including the redevelopment of Stapeley Water Gardens because the Great Crested Newt ponds will have to stand for 12 months, to acclimatise, before the Newts can be translocated from existing ponds to the new ones. The application is submitted without prejudice to the continuing discussions in relation to the legal agreement although amendments to the drafting of the current agreement will be required as detailed towards the end of this report.

A similar process was completed in relation to the provision of the Great Crested Newt ponds at Basford West, Crewe. In that case the application for the ponds was approved before consideration of the outline application for the employment development by any committee of the former Crewe and Nantwich Borough Council.

Principle of Development

Areas A and B are in land designated as open countryside under policy NE.2 in the Borough of Crewe and Nantwich Replacement Local Plan. Other areas, which comprise the 15m corridor linking Areas A and B, the 10m wide corridor linking Area B to the habitat areas around Stapeley Manor site and those areas of habitat round the former Stapeley Manor are within the Stapeley allocation in the Replacement Local Plan under policy S.12.5. The use of land in the open countryside for ecological mitigation purposes is not considered to conflict with policy NE.2 which allows for essential development for "other uses appropriate to the rural area". The Development Brief for the site did not specifically identify land to be used for ecological mitigation purposes.

The formation of the ponds and provision of native tree and shrub planting is not considered to create features which would be out of character with the appearance of the countryside around about.

The proposal is therefore in accordance with policies NE.2 and S.12.5 of the Borough of Crewe and Nantwich Replacement Local Plan. Policies NE.5 and NE.9 require that development which destroys wildlife habitats should be compensated for by appropriate mitigation.

Ecology

The Ecological Mitigation Design Strategy (EMDS) identified the principles for the design of the mitigation scheme. A number of those requirements are not met by this submission and this is summarised in the table attached at appendix 1 and addressed further below.

The EMDS requires the highest priority to be given to the retention of habitats where appropriate in the new development. It is noted that some tree removal has taken place within the main development site but not on land which is the subject of this application. However this tree removal did not affect trees protected by the Tree Preservation Order. Existing trees and hedgerows around Areas A and B and also the mature trees around the site of Stapeley

²¹ Manor will be retained. In addition the casting pond which is outside the main development area but within this application area for mitigation works is also retained. Details of the loss of ponds within the Water Gardens site are discussed below.

Great Crested Newts – Aquatic and Terrestrial Habitats

The amended plans show that ponds in Area A will be distributed throughout the area and the omission of ponds from the northern end on the original plans submitted has now been rectified. The EMDS required the scheme to achieve replacement ponds on the basis of three ponds provided for every two lost and to “attempt to achieve” a two for one replacement. The submission made now shows that the Habitat Suitability Index (HSI) which is used for determining mitigation under the Natural England licensing scheme identifies optimum conditions for replacement and that replacement is not determined solely on numerical factors. The requirement for attempting two new ponds for one lost is not attained. Similarly the requirements for providing three new ponds for every two lost is not achieved. Thirty ponds are present in the Stapeley development site of which only one (the casing pond) will be retained. Pond 23 adjacent to the access and the pond which had the highest number of Great Crested Newts will not be retained because it is too close to the access for the residential development. It is also a highly artificial environment for Great Crested Newts and the earlier information submitted in relation to the outline application accepted that such ponds would not be retained. However the casting pond which is in Area A is retained. All other 29 ponds will be removed and replaced by 11 new ponds which will have variable profiles including the formation of shallows to create separate linked water areas. This therefore represents 33 smaller linked water bodies equating more closely to a one for one replacement.

However the total area of water area lost is 0.23 ha and this will be replaced by 0.77 ha of new water area which represents a 3.34:1 ratio which does attain a higher area of water than required by the EMDS.

The sections submitted show the ponds will achieve a variety of sizes and depth as required by the EMDS and measures to maximise protection from drought. The increase in size of water bodies substantially supports this requirement.

Whilst there is only one pond provided in the corridor linking Areas A and B in view of the need to meet the HSI for the Great Crested Newt licence application this is considered acceptable. The majority of ponds are grouped into Areas A and B and the corridor is required to provide a variety of habitats between these areas. As well as the pond it will be planted with native species. The pond to be formed is in a similar position but not exactly the same as the existing reservoir but no details are supplied in relation to the removal of the reservoir and formation of the new pond at ground level. This should be subject to a condition.

The corridor linking Areas A and B is to be 15 metres wide as required by the EMDS. The corridor linking Area B to the retained mature trees around Stapeley Manor is 10m. In negotiation under the outline application it was

²¹accepted that this linkage would be used for both pedestrian and ecological links and would be 10m wide. In the current position at the edge of the site it is less likely to be used for pedestrian linkages. At this point in time, although no planning application has been submitted for the residential layout it is intended that the retained trees around the former Stapeley Manor will serve for both public open space and also ecological linkages.

The details of the various ecological areas are given at the beginning of this report. The total areas of habitats resulting from the combination of Area A, Area B and the corridor linking these two areas is 4.013 ha including the one pond in the southern link corridor. When the additional linkage from Area B to the Manor site and areas around the east, south and west of Stapeley Manor are included this figure rises to 5.142 ha.

The EMDS requires a minimum provision of 3.9 ha of terrestrial habitat to be provided through green links and safeguarded nature zones. The terrestrial habitat provided in Areas A and B is 2.86 ha (1.56 ha for Area A and 1.29 ha for Area B). With the addition of the retained habitat around Stapeley Manor, the link to Area B and the link between Areas A and B this figure rises to 3.82 ha. This is slightly short of the minimum of 3.9 ha required by the EMDS. Bearing in mind the fact that it is short the applicant has agreed to accept a condition on any planning permission that when the planning application is submitted for the access road to serve the B1 office development and the relocated Water Gardens additional terrestrial planting will be provided on the edge of the road to link Area A to the Cronkinson Farm mitigation areas to the west of the Stapeley development site. This would then exceed the minimum figure.

There is no green buffer or nature zone provided to the west of the road shown on the Masterplan submitted with the application. The EMDS requires that a 15m habitat corridor be provided here to provide connectivity. The applicant's agent does not accept this as good practice. He considers that the Cronkinson Farm mitigation area immediately west of this part of the Stapeley Development site provides better quality mitigation and that to provide native planting to encourage the Great Crested Newts away from the existing provision to the west and along side a road would potentially encourage them into a dangerous location. Further the relocated Water Gardens will not provide an optimal habitat for the Great Crested Newts. He considers that the preferable approach is to use the existing tree planting around the site of Stapeley Manor and provide for the appropriate linkages on that side of the site. Further he considers that the provision of high quality habitats in Areas A and B and the linkage along the south side of the development offer a preferable habitat for successful mitigation. He points to a number of defects in the Cronkinson Farm mitigation including regular public access. The proposed Mitigation in Areas A and B will not be available for public access. If the habitat corridor to the west of the site is not to be provided it is necessary to look at what alternative linking habitats are proposed in the submission.

The illustrative plan in the EMDS did not show the existing tree and shrub planting on the north side of Stapeley Manor (south of Peter Destapleigh Way) as providing habitat corridors. The proposal is therefore to replace the linkage on the western side of the site with those around the Stapeley Manor

21. Site. There are two habitat corridors one on the west of Stapeley Manor and one on the east. It is intended that the corridor on the west will form the "green link" which is shown on the zone plan submitted with the outline application. On the zone plan this was shown as a 10m wide corridor to be used for wildlife connections and serve as a pedestrian link being on or close to the right of way through the site. This will also form part of the open space for the development site. In consideration of the outline application it was accepted that the green link through the site would have a dual use of ecological linkage and pedestrian access.

There is also a narrow green link habitat shown on the illustrative plan in the EMDS, linking the northern and southern development site boundaries centrally through the outline application area. The northern section of this is provided as the "green link" but not the central and southern sections, where it runs between residential development on the east and the combined relocated Water Gardens and B1 office development on the west. The reason for this is that both sides of that linkage will be developed under the outline application. It is considered better to enhance the mitigation under areas A and B and the related linkage. To encourage wildlife through the developed area when other alternatives offer a better habitat is not good practice.

Whilst the illustrative layout in the EMDS showed planting on the south and west sides of Area A it did not include planting on the north and east sides of Area A. That is to be provided, but not so as to overshadow the ponds. Except for the area around the retained casting pond, these planted margins vary in width from an average of 12m on the north and east sides of Area A, a variable width from 12 m to 23m on the southern boundary, and variable width of 11m -16m on the western side. Whilst the southern and western boundaries do not achieve the 15m width required by the EMDS at all points, there is also a need to ensure that planting does not overhand the water areas and adversely affect the ponds. There is therefore enhancement of this area to compensate for the loss of the planting on the west side of the access road to the new Water Gardens and B1 office development.

The EMDS requires linking habitats to include terrestrial and aquatic habitats and provide connectivity between retained habitats, new habitats and existing mitigation areas. The terrestrial linkages will achieve this, linking the retained habitats on the south side of Peter Destaplegh Way with Areas A and B and also linking Area A to the retained Cronkinson Farm habitat to the west of the Stapeley development site. This latter connection will be improved by the condition referred to above for additional planting adjacent to the access to the B1 office development.

The EMDS requires that the "green link" be a minimum of 10m wide. It is noted that the retained planting area around the west side of the former Stapeley Manor includes 3 pinch points where this is not achieved but this is more than compensated for by the locations where the corridor exceeds this width and it is therefore considered that this is acceptable. Whilst the 15m habitat corridor is not provided on the northern part of the western boundary for the outline application it is considered that this is compensated for by the habitat created on the east side of the Stapeley Manor site and the proposed planting through Area A.

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 resting 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 of the Borough of Crewe and Nantwich Replacement Local Plan requires that development should facilitate survival of individual members of the species, reduce disturbance to a minimum and provide adequate alternative habitats to maintain the level of the population.

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.

²¹ In this case the Stapeley development site was considered at the Local Plan Inquiry for the current adopted Local Plan. The Inspector concluded that the site should be developed as a mixed use regeneration site. There are no other similar mixed use allocated sites available in this area. The site is to be developed to allow the redevelopment of Stapeley Water Gardens with an up to date modern garden centre facility. Further whilst the Core Strategy for the Cheshire East has still to be developed nevertheless government advice notes the need to ensure affordable housing in all areas and this site will deliver affordable housing. This application proposes suitable mitigation for the habitats which will be lost as a result of the development. In the case of Great Crested Newts the existing habitats are largely in the display ponds in the Water Gardens and are not ideal habitats for the species. The proposed mitigation provides replacement habitats which are designed with optimum habitat creation. It is therefore considered that the proposals represent quality mitigation which will ensure the maintenance of the existing population and maintain the favourable conservation status of the species. The ecological mitigation proposed was given full consideration when the outline application was considered by the Development Control Committee of the former Crewe and Nantwich Borough Council and resulted in the proposal for mitigation works and the requirements for the submission of a maintenance scheme.

Bats

At the time of survey in 2006 Stapeley Manor was present and bats were found in the roof as well as Great Crested Newts in the basement. A fire in the Manor resulted in the structure being considered dangerous and the owner was required to demolish it for safety reasons. There is therefore now no bat habitat on site. The EMDS required replacement roosts to be provided to reflect the existing character and features of the roost. Since there are no existing habitats it is not considered reasonable to require a roost to be provided but the proposals do include the provision of bat boxes to one mature tree on Area B, one tree north of Area B, one in the retained trees around the Stapeley Manor site and one tree to be identified in the mature trees around Area A. In each case three bat boxes will be provided on each tree facing different directions to provide optimum enhancement.

There is no requirement for a Natural England licence now that the Manor has been removed and the measures to encourage bats to roost in the area will enhance biodiversity. Details of appropriate bats boxes were included in the EMDS. The applicant has agreed to accept a condition for full details of which boxes and to identify which tree in Area A to be attached to any permission. In addition biodiversity will be enhanced by the proposed landscaping.

In conclusion although the requirements of the EMDS are not fully met it is not considered that the proposed mitigation works will have an adverse impact on any bats using the area but will enhance their habitats through the provision of new landscaping using native species and the provision of bat boxes.

Nesting Birds

The Ecological Surveys for the outline application found a colony of House Sparrows nesting in the former Manor but there was no evidence of other birds nesting in buildings at the Water Gardens. In addition Song Thrush and

²¹ Dunnock were found in the grounds around Stapeley Manor. These species are red list species and a Cheshire Priority Biodiversity Action Plan Species. A number of nesting birds which are also protected was also found in the outline application area.

The EMDS requires that no site clearance, demolition of buildings supporting nesting birds, vegetation removal etc take place during the nesting season. A condition should be imposed for buildings, hedgerows and trees to be checked if they are to be removed during the nesting season (1st March and 31st August in any year). If nesting birds are found no works to take place until the birds have fledged.

A further condition should provide for bird nest boxes to be provided for BAP species recorded on the site. However in the case of the House Sparrows these nesting boxes will need to be located in the residential areas because of the habits of this species. This will therefore need to be attached as a condition to this permission for details to be submitted with each phase of residential development.

Timing of Works

The EMDS was prepared on the basis that the first phase of development of the full development site would be the residential development of Stapeley Manor. This is no longer the case. It is anticipated that the relocated Water Gardens and the residential development at Stapeley Manor together will form the first phase of development but the priority of these two events has less significance to the current application under consideration. The important factor is that all appropriate mitigation takes place before any valued habitat is removed. The ponds must be formed, allowed to stand and Great Crested Newts translocated before any development of Stapeley Water Gardens takes place. The timing of the provision of nest and bat boxes also needs clarification. It is therefore recommended that a condition be attached to any permission for a revised phasing plan for the implementation of the works to be submitted within two months of the date of the decision notice. Nevertheless the phasing plan can still achieve the requirement of the EMDS that the phasing should be completed to avoid disturbance, damage and isolation to existing habitats prior to the formation of new habitats.

Landscaping

Tree surveys (including plans) were submitted with the outline application for the mixed use development. Letters of objection wish to see the full extent of retained trees around Areas A and B shown on the submitted plans. It is considered that a condition can be attached to any permission requiring the details of protective fencing to be submitted prior to the commencement of site works. Any such plan showing the position of protective fencing will need to include the crown spread of retained trees.

The landscaping proposals now submitted include schedules of suitable native species of trees, scrub, grasses, wildflowers, aquatic and marginal plants and indicative landscaping layouts but no detailed landscaping plans. It is considered that the details submitted demonstrate that the landscaping

²¹proposed will provide the appropriate habitat and enhancement required and a condition can be attached to any permission for full details to be submitted and agreed. It is recommended that this be submitted within 4 months of the date of the decision notice so as not to delay the construction of the ponds. A condition can also be imposed to require the provision of the landscaping in the 2010-2011 planting season.

Conditions should also be attached to any permission to prohibit the felling of trees within Areas A and B and all linking corridors (i.e. this application area) without the prior approval of the local planning authority. A condition should also be attached for details of tree and hedgerow protection measures to be submitted and approved prior to the commencement of any development or site works in relation to this application.

Mounding will take place using some of the excavated material. A condition should be attached to any permission to ensure that the formation of mounds does not cover any existing tree roots.

Relationship with the Proposed S106 Agreement for the Stapeley Water Gardens Development

The outline planning application for the redevelopment of Stapeley Water Gardens was approved by the Development Control Committee of the former Crewe and Nantwich Borough Council in September 2007 subject to the completion of a Section 106 agreement. Negotiations are still continuing in relation to the S106 agreement and a separate report in relation to detailed alterations to the agreement is also included on this agenda. However there is within the S106 agreement a requirement for the submission and approval of a management scheme in relation to the ecological mitigation areas.

The draft agreement requires the developer to submit a comprehensive ecological mitigation strategy including a phasing plan, timetable for its implementation and a future maintenance and management plan at the same time as the first reserved matters application for the Stapeley development site is submitted to the Council. The developer is not permitted to commence development until the details are agreed. The agreement allows the mitigation strategy to be amended from time to time. It shall be implemented in accordance with the agreed scheme.

The submitted application is based on the EMDS but does not meet all its requirements. However as explained above it is considered that the mitigation proposed provides appropriate measures to ensure the protection and enhancement required by the principles of the EMDS. The Section 106 agreement will need to be amended prior to completion and signing to refer to the ecological mitigation works submitted under application 09/4017N.

A report in relation to various other alterations to the S106 agreement for the outline application is included on this agenda. However that agreement is not yet signed and in order to ensure that the construction of the ponds can commence as soon as possible it is recommended that a condition be imposed, that in the event that the S106 agreement is not completed and signed within 6 months of the date of the newt mitigation decision notice, a

²¹ Maintenance scheme be submitted for approval in writing in accordance with the requirements of the EMDS in relation to the maintenance of the site. Monitoring is a requirement of the Natural England licence and this should also be included in the maintenance scheme.

Separate ecological surveys were submitted relating to the part of the site known as Stapeley Manor and Stapeley Water Gardens 2006. Although these two areas were treated separately for survey purposes, a single ecological mitigation strategy was produced for the full development site. This was subject to negotiation and alteration, with Natural England taking an important role in those negotiations because Crewe and Nantwich Borough Council did not have any in-house ecological expertise. However since the formation of Cheshire East Borough Council, Natural England have now stated that they do not wish to be included as a consultee for sites such as this which they consider can be adequately addressed by Cheshire East's Ecologist.

CONCLUSIONS

The proposed mitigation works do not fully provide all the requirements of the Ecological Mitigation Design Strategy. However it is considered that the provision of the 11 ponds with enhanced habitat in Areas A and B and the provision of a linking corridor between the two areas with a variety of habitats will provide appropriate mitigation to allow the development of Stapeley Water Gardens and maintain the favourable conservation status of the Great Crested Newts. It is noted that the area of water to be provided in the new ponds will triple the area of water in the existing ponds. Further the retention of mature trees and development of linkages around the site for the proposed residential development on Stapeley Manor will create appropriate linkages to the Cronkinson Farm planting on the south side of Peter Destapleigh Way improving connectivity. A condition will also be imposed for additional planting to be provided to link the western area of mitigation provided under the Cronkinson Farm development to Area A. The condition will require this to be submitted as part of the reserved matters application for the access road. The details proposed in the current planning application will also enhance the biodiversity of the area.

The formation of the ponds and landscaping of the area with bat and bird boxes will not adversely impact on the character and appearance of the open countryside or the area aroundabout.

The application is therefore considered to comply with policies NE.2 (Open Countryside), NE.5 (Nature Conservation and Habitats), NE.9 (Protected Species) and S.12. 5 (Mixed Use Regeneration Sites) of the Borough of Crew and Nantwich Replacement Local Plan 2011.

11. RECOMMENDATIONS

It is recommended that the Section 106 agreement in relation to application P06/1001 which includes a requirement for the submission of an ecological mitigation strategy shall be modified to ensure that (1) reference is made to the Ecological Mitigation Design Strategy prepared

²¹ by TEP and dated August 2007 as modified by planning application 09/4017N and (2) the wording reflects the fact that this application has already been submitted.

APPROVE subject to the following conditions:-

1. Standard
2. Amended plans
3. Phasing plan and timetable for implementation of works.
4. If the S106 for Stapeley Water Gardens development site is not completed and signed within 6 months of the date of the planning permission for the newt mitigation, a fully detailed maintenance scheme, identifying parties responsible for the maintenance and provision for maintenance in the event that the original party is no longer able to meet the requirements, shall be submitted to the Local Planning Authority within one month of the expiry of the 6 month period for approval in writing. The maintenance plan shall provide for maintenance in perpetuity and be implemented in accordance with the approved scheme.
5. Fully detailed landscaping scheme to be submitted within four months of the date of the newt mitigation decision notice.
6. Implementation of the landscaping scheme within the 2010-2011 planting season.
7. Ponds and habitat areas in Areas A and B and the linking corridor between these two areas to be used solely for wildlife mitigation and not for any other purpose and no ponds to be stocked with fish at any time. No ponds to be used for any SUDS scheme. No public access to Areas A and B and the linking habitat corridor between these two areas.
8. Application for the access road to serve the relocated Water Gardens and the B1 office development to include planting to form linkages to Area A and compensate for the short fall of terrestrial habitat requirements of the EMDS and provide additional planting to link Area A and the Cronkinson Farm mitigation land.
9. Full details of bat boxes to be submitted, location of appropriate tree in area. Implementation.
10. Prior to the completion of the development hereby approved and implementation of landscaping scheme no tree felling or other works to trees within the application area for this application without the prior written approval of the Local Planning Authority
11. Scheme for the submission of tree and hedgerow protection and implementation.
12. The formation of mounds using excavated material shall not take place within the root zone of any retained trees.
13. Scheme for the removal of the reservoir and repositioned at ground level in the southern linking corridor to be submitted approved and implemented.
14. Scheme for the provision of nest boxes for BAP species (Dunnock and Song Thrush).

21

- 15. All phases of residential development to include details of bird nest boxes for house sparrows and implementation.**
- 16. Details of provision of amphibian tunnels to be provided in the appropriate applications for the construction of the roads and provided as the roads are constructed.**
- 17. Masterplan submitted with the application shall be purely illustrative and not binding on the future development of Stapeley Water Gardens.**

Informative

Need for Great Crested Newt Licence from Natural England prior to any site works.