

Application No: 10/1323M
Location: LAND NORTH OF BOLLINGTON LANE AND WEST OF,
CONGLETON ROAD, NETHER ALDERLEY, MACCLESFIELD
Proposal: RENEWAL OF PLANNING PERMISSION 03/3214P -
(RELOCATION OF EXISTING GARDEN CENTRE AND
LANDSCAPE CONTRACTORS BUSINESS - OUTLINE PLANNING
PERMISSION)

For I & W URQUHART

Registered 06-Apr-2010
Policy Item Yes
Grid Reference 384248 374531

SUMMARY RECOMMENDATION - Refuse extension of time on grounds of insufficient information in respect of flooding and protected species and the lack of a satisfactory S106 Agreement

MAIN ISSUES

Whether there has been a significant change in circumstances or policy
Whether there is sufficient information submitted to enable an extension of time to the original outline permission 03/3214P to be granted.

SCOPE OF THIS APPLICATION

Extensions to the time

limits for implementing existing planning permissions were brought into force on 1 October 2009. The new system was introduced in order to make it easier for developers to keep planning permissions alive for longer during the economic downturn. It includes provisions for a reduced fee and simplified consultation and other procedures.

The Government's advice is for Local Planning Authorities to take a positive and constructive approach towards applications that improve the prospects of sustainable development being brought forward quickly. It is the Government's advice for Local Planning Authorities to only look at issues that may have changed significantly since that planning permission was previously considered to be acceptable in principle.

In short, it is not intended for Local Planning Authorities to re-open debates about principles of any particular proposal except where material circumstances have changed, either in development plan policy terms or in terms of national policy or other material considerations such as Case Law.

The original planning permission (ref 03/3214P) granted outline planning permission for the relocation of an existing garden centre and landscape contractors business subject to

the satisfactory completion of a S106 Agreement. The outline permission was granted on 9 March 2005.

Condition 3 attached to that outline permission required the development to commence before whichever is the later of the following dates:

- (a) within five years of the date of the permission or
- (b) within two years of approval of the last of the reserved matters to be approved.

The last reserved matter application submitted in respect of this site was 08/0486P. That last reserved matter was approved on 18 April 2008.

Accordingly, the current application (received on 6 April 2010) was received whilst the original application was an extant permission. Whilst the guidance advises Applicants not to leave their applications to the last minute, it remains clear that this application was submitted in time and therefore falls to be determined.

The original report for the approved outline scheme is attached to this report as Appendix 1.

APPLICANT'S SUPPORTING INFORMATION

The Applicant does not consider there to have been any material changes in policy or other material considerations which would prevent their application from being approved.

The application is submitted in accordance with the Regulations as set out in the Town and Country Planning (General Development Procedure) (England) Order 2009.

CONSULTATIONS (External to Planning)

Environment Agency : The original application for this site (03/3214P) was submitted prior to Planning Policy Statement 25: Development and Flood Risk (PPS25) becoming a material consideration in December 2006. The Environment Agency have therefore not had sight of a Flood Risk Assessment.

The site lies within Flood Zone 1 therefore in line with PPS25 all development proposals over one hectare should be accompanied by a Flood Risk Assessment (FRA). None is submitted. An objection is raised in the absence of such information being submitted with the application.

Cheshire East Nature Conservation Officer: As a European protected species may be affected by the proposed development the Council must have regard to the tests prescribed by the Habitat Regulations when determining this application. An objection is raised on the grounds that a ecological survey has not been submitted in support of the application and therefore the application is has insufficient information to enable a judgement to be made.

Strategic Manager Highways : As there has been no material changes in highway terms since the previous application was approved, the same improvements agreed to the junction of Bollington Lane/ Congleton Road should be attached to this application.

Nether Alderley Parish Council: Object to the renewal on the grounds that the existing garden centre has relocated elsewhere and had been granted permission as a very special circumstance in terms of green belt policy. As these circumstances are no longer evident there is no justification for this application

OTHER REPRESENTATIONS

The Edge Association: Object on the grounds that the existing garden centre has relocated to Somerford Booths and had been originally been granted permission as a very special circumstance in terms of green belt policy . As these circumstances no longer apply there is no justification for this application. Also consider the works to the Bollington Lane/A34 junction as part of the by-pass, currently underway, to mean that the original proposed junction to be incorrect

Ten individual letters/emails have been received from local people and one local company which raise objections on the grounds that the very special circumstances that originally existed to granted the initial permission for SE Matthews to relocate from their original site in the grounds of Astra Zeneca over the road no longer exist given that SE Matthews have relocated to Somerford Booths. Other issues raised include the perception that the original permission is no longer valid and the relationship of this application to the Dobbies application (09/3109M) which remains to be determined.

MATERIAL CHANGES IN POLICY/CIRCUMSTANCES SINCE PREVIOUS APPLICATION

There are considered to be fundamental changes in policy ; and other important material considerations; namely changes in legal interpretation of protected species issues as interpreted by the Courts, since the original outline application was originally determined in March 2005.

The first change in the planning policy framework concerns the issue of flooding/potential surface water run off. In this regard, Planning Policy Statement 25: Development and Flood Risk (PPS25) was adopted in December 2006, after the original development was granted outline planning permission in 2005. No flood risk assessment (FRA) was submitted with the original application and a FRA was only submitted in support of this application on 9 June 2010 after the objection from the Environment Agency was received.

The application site lies within Flood Zone 1 defined by Planning Policy Statement 25: Development and Flood Risk (PPS25). PPS25 requires that all development proposals above 1 hectare in size are submitted with a FRA. The proposed scale of development may present risks of flooding on-site and/or off-site if surface water run-off is not

effectively managed. Paragraph E9 of PPS25 requires applicants for planning permission to submit a FRA when development on this scale is proposed in such locations.

This is an important material consideration which is fundamentally different to when the scheme to which this application seeks an extension was originally determined. In the absence of a detailed Flood Risk Assessment in support of this application, the precautionary approach must be taken.

At the time of writing this report, the flood risks resulting from the proposed development are unknown as they are still being considered by the Environment Agency.

There is a precautionary approach to development in flood risk areas set out in paragraphs 10 and E9 of PPS25. This matter will be further considered in the update report.

IMPACT UPON PROTECTED SPECIES AND MATERIAL CHANGES IN CIRCUMSTANCES SINCE THE SCHEME WAS ORIGINALLY GRANTED PERMISSION

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, if there is

- no satisfactory alternative
- no detriment to the maintenance of the species population at favourable conservation status in their natural range
- a specified reason such as imperative, overriding public interest.

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

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

Circular 6/2005 (dated 16 August 2005) advises LPAs to give due weight to the presence of a European protected species on a development site to reflect .. [EC] ...requirements ... and this may potentially justify a refusal of planning permission."

In PPS9 (2005) the Government explains that LPAs "should adhere to the following key principles to ensure that the potential impacts of planning decisions on biodiversity are fully considered..... In taking decisions, [LPAs] should 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..... If that significant harm cannot be prevented, adequately mitigated against, or compensated for, then planning permission should be refused."

With particular regard to protected species, PPS9 encourages the use of planning conditions or obligations where appropriate and advises, “[LPAs] should 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 species detriment, development alternatives and public interest seem likely to be satisfied, no impediment to planning permission arises under the Directive and Regulations.

Recent legal challenges and interpretation of the Habitat Regulations by the Courts are considered to result in a material change in circumstances in this case. No ecological reports or information/mitigation has been submitted in support of this application.

The site both supports and is close to a number of habitats where there is a likely presence of protected species. The proposal also involves the loss of a number of trees which could also potentially support protected species. The precautionary approach must be taken in terms of this issue. As no information is submitted it is not possible for the Council’s ecologist to reach a judgement and the recent changes in case law have clarified the matter to such an extent that this matter can not be dealt with by condition.

This is considered to be a significant change in circumstances since the proposal was originally considered, and a very important material consideration in the determination of this application.

SCALE PARAMETERS

Circular 01/06 introduced changes to the Planning System which included changes to information submitted in support of outline planning applications. For the first time scale parameters (i.e. maximum and minimum heights/widths/lengths of building) were required to be submitted to define the scope of built form in any outline scheme.

Condition 1 attached to 03/3214p reserved all matters pertaining to design, external appearance, siting, means of access and landscaping for future consideration. In this respect, whilst no specific scale parameters are submitted here, there was sufficient supporting information within the original application which would allow conditions which would address this particular change in circumstances. On this basis, no issue is raised.

THE IMPACT OF THE PROPOSAL IN THE LIGHT OF THE LACK OF ANY HEADS OF TERMS FOR A S106 AGREEMENT BEING SUBMITTED

Permission was originally granted for the application under consideration subject to a S106 Agreement that amongst other things required landscaping to be provided and maintained in perpetuity and specifically controlled the types of goods to be sold from the garden centre.

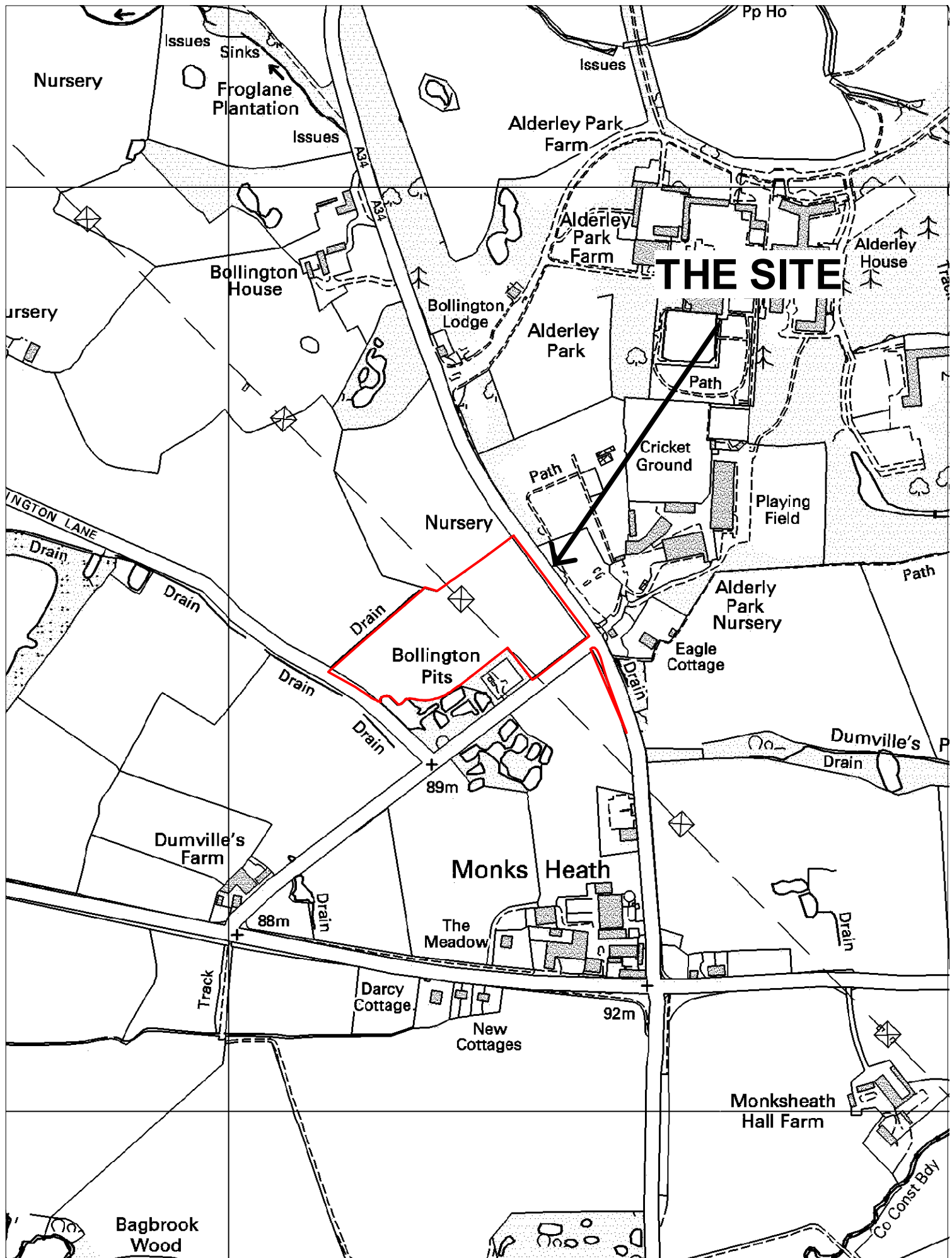
This is a stand alone application which requires a stand alone Legal Agreement. As no such undertaking has been submitted with this application, issues that were only previously considered to make the Matthews scheme acceptable on the basis of the relevant clauses in the Legal Agreement have not been adequately addressed in this renewal application.

CONCLUSIONS AND REASON(S) FOR THE DECISION

It is recognised that there are situations where flexibility and responsiveness to the challenging circumstances faced by the development community can easily be accommodated by the Local Planning Authority. It is, however, considered that such support for time extensions to development schemes that have a planning permission can only be accommodated where there are no material changes in policy either at development plan level or at national government level.

In this case there are fundamental changes to the planning policy framework that require both a Flood Risk Assessment (FRA) and Habitat Surveys for both the Great Crested Newts and other European protected species such as Bats.

As no such supporting information is submitted, there is insufficient information to determine this application. This together with the lack of any Legal Obligation or Heads of Terms for the S106 renders this application to fail to meet the requirements of the Development Plan and other material considerations and on this basis it should be refused permission.



10/1323M - LAND NORTH OF BOLLINGTON LANE AND WEST OF CONGLETON ROAD NETHER ALDERLEY

N.G.R.; - 384.248 - 374.514

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Scale 1:10000

Application for Extension to Time Limit

RECOMMENDATION: REFUSAL

- 1. lack of information - flood risk**
- 2. lack of information - ecological survey**
- 3. insufficient info - impact on retaling and future maintenance of landscaping**