

Application No: 11/3349C

Location: PLOT 1, LAND ADJACENT TO, 6, HEATHEND ROAD, ALSAGER, ST7 2SQ

Proposal: SINGLE DETACHED DWELLING ON LAND ADJACENT TO NO. 6 HEATH END ROAD

Applicant: MR ADRIAN GIRVIN

Expiry Date: 28-Oct-2011

**SUMMARY RECOMMENDATION:** Approve subject to conditions and the completion of a Section 106 Agreement to ensure the future protection of Great Crested Newt habitat.

**MAIN ISSUES:**

- Principle of the development
- Layout and Scale
- Appearance
- Amenity
- Highways
- Ecology
- Trees and Landscape

**REASON FOR REFERRAL**

Called in by Councillor D Hough on the grounds that:

- “1. The effect on removal of rubble from the site on the Oak Tree. The Oak tree has a TPO.*
- 2. The effect of the drain going down the drive and the effect on the Oak Tree. The alternative drain may not be available due to land ownership issues.*
- 3. The newt mitigation issue is incomplete with other local ponds not being surveyed.”*

**DESCRIPTION AND SITE CONTEXT**

The application relates to an area of land approximately 0.3ha in size, situated between two residential properties. The site contains a wooded area with a pond, which has been identified as being a habitat containing Great Crested Newts. The eastern side of the site is a grassed area with open countryside to the north and residential properties to the east. The site also contains two mature Oak trees that are the subject of a Tree Preservation Order. The land is designated in the local plan as being within the settlement zone line of Alsager.

There have been several unsuccessful applications for residential development on this site, details of which are listed in the report. However Southern Planning Committee approved an application in March 2011, for a detached bungalow with a detached double garage. This was subject to a Section 106 Agreement to ensure the protection of Great Crested Newts, which has now been completed.

## **DETAILS OF PROPOSAL**

The proposal is for the erection of one split level dwelling with a detached triple garage, sited within the grassed area of the site, with access being taken from Heath End Road. The dwelling would provide five bedrooms, two with en-suite and a separate bathroom in the roof space. On the ground floor there would be a large kitchen with living area and conservatory, a lounge, dining room, play room, music room, utility and hallway. There would also be an underground basement level which would house a swimming pool, gym and games room, leading on to a sunken terrace. The external finishes of the building would consist of rendered wall with stonework details to the doors and windows and the roof would be clad in Staffordshire blue/black roof tiles.

The ground floor footprint of the proposed dwelling would be just under 27 metres wide, 16 metres deep at the widest point, with a roof height (measured from ground level) of 7.1 metres at the highest point. The garage would be sited in the south eastern corner of the plot and would be 8.5 metres wide, 6 metres deep, with a roof height of just less than 6m when measured from ground level. It would have accommodation in the roof space for a hobby/study room which would get natural light from two dormer windows that would face on to the driveway and wooded area.

The overall ridge height of the proposal is the same as the previously approved scheme. However, the additional accommodation is achieved through a reduction on ground levels on the site by up to 1m in places.

## **RELEVANT HISTORY**

27679/3	1996	Refusal for the erection of 7 dwellings
28018/3	1996	Refusal for the erection of 5 dwellings
31940/3	2000	Refusal for the erection of 5 dwellings
33264/3	2001	Refusal for the erection of 5 dwellings, appeal dismissed 2002
36593/3	2003	Refusal for the erection of 5 dwellings
08/1687/FUL	2009	Withdrawn application for the erection of 3 dwellings
10/0815C	2010	Withdrawn application for the erection of 2 dwellings
11/0217C	2011	Approval subject to s106 for bungalow and detached garage

## **POLICIES**

### **National Guidance**

National Planning Policy Framework (March 2011)

### **Congleton Borough Local Plan First Review 2005**

The site is not allocated in the Local Plan but the following policies apply:

PS4 – Towns

H1 & H2 – Provision of New Housing Development

H4 – Residential Development in Towns

GR1 – New Development

GR2 & GR3 – Design

GR6 – Amenity and Health

GR9 – Parking and Access

NR1 – Trees and Woodlands

NR2 – Wildlife and Nature Conservation

NR3 – Habitats

SPG2 – Provision of Private Open Space in New Residential Developments

SPD14 – Trees and Development

### **Other Material Considerations**

BS 5837:2012 Trees in relation to design, demolition and construction - Recommendations

The Conservation of Habitats and Species Regulations 2010 (as amended)

### **CONSIDERATIONS (External to Planning)**

#### **Environmental Health:**

Recommend that conditions be imposed relating to land contamination and hours of construction and pile driving.

#### **Highways:**

This new access will require a properly constructed vehicular crossing which complies with Cheshire East Council authority standards.

The Strategic Highways Manager recommends that any planning permission which may be granted have the following informative attached:

**Informative:** Prior to first development the developer will enter into and sign a Section 184 Agreement with Cheshire East Highway Authority with regard to the construction of the new vehicular crossing.

#### **Natural England**

##### **(15<sup>th</sup> November 2011 Letter to Councillor Robinson)**

Firstly, it should be noted that Natural England has not been consulted on this application. It is usual for Cheshire East to not consult Natural England about such cases, where we are not a Statutory Consultee. In this instance the Local Authority will have determined that the advice we have provided on our website is sufficient for them to make the correct decisions about developments that have the potential to impact on Protected Species.

We are aware that we have already provided comments to a concerned resident about the issues of GCN in the area of the proposed development (email from Duncan Brown sent to Tracey Greenhough). In this correspondence we stated that the methodologies to be employed by the applicant's ecological consultant would require a licence.

It is the responsibility of the Local Authority to be satisfied with the mitigation strategy for any protected species and that it would be necessary to determine if the planning application had sufficient information on which to base their decision on whether to grant planning permission. In addition they should also have reasonable confidence that Natural England would grant a licence based on the information provided by the applicant.

It is not the responsibility of Natural England to make a decision on whether a development is appropriate or not. This lies solely with the Authority. If the Authority are concerned about a particular development and its effect on protected species, and our Standing Advice does not sufficiently cover issues posed within an application, we are here to provide additional advice.

Based on the information provided in the planning application documentation, it is clear that the strategy proposed is not sufficiently detailed at this time. As such the Authority would need to ensure that the strategies to be employed, sufficiently mitigate against impacts on GCN.

#### **(19<sup>th</sup> April 2013 to Cheshire East)**

We have reviewed the document titled 'Review Report - Ecology' and can confirm that the advice given to your Authority in our response issued to Councillor Robinson on 11 November 2011 remains valid. We further reference our correspondence with your Authority on 7 December 2011 and with the applicant's ecologist (9 January 2012) where we provide clarification on our comments made in the letter of 11 November 2011. We wish to remind you that the responses provided were for advice only and that they were based upon conversations between me and my colleagues in our regulation team. We would like to point out that the advice we have provided is consistent with our written guidance on our website in that we have referred to standing advice and the relevant flow charts and species guidance but as the original response was to Councillor Robinson, and subsequent correspondence with you and the applicant we considered it more appropriate to be clear why we provided the advice that we did rather than through a standard letter response. **However, the overall decision to permit the development lies with your Authority and you are not obliged to take the advice of Natural England.**

For the purposes of clarity we remind you that [The Conservation of Habitats and Species Regulations 2010](#) (As Amended), usually referred to as the 2010 Habitats Regulations, implement Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) into national legislation. Article 12 of the Habitats Directive contains a range of prohibitions seeking to protect certain species (European Protected Species). Those prohibitions include deliberate capture or killing and deliberate disturbance. Article 16 provides for a number of circumstances in which a Member State may derogate from the obligations in Article 12. The Habitats Regulations (Regulation 41) make a breach of the Article 12 provisions a criminal offence. The derogations contained in Article 16 are implemented by way of a licensing regime (Regulation 53) which can make an activity that would otherwise be an offence, lawful if carried out in accordance with a licence.

Under regulation 9 (5) of the 2010 Habitat Regulations your Authority, in exercising any of your functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions". A Planning Authority is a competent authority for the purposes of these Regulations and is exercising a function in deciding whether or not to grant planning permission.

In determining whether or not to grant a licence Natural England must apply the requirements of Regulation 53 of the Regulations and, in particular, the three tests set out in subparagraphs (2)(e), (9)(a) and (9)(b).

(1) **Regulation 53(2)(e)** states: a licence can be granted for the purposes of "preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment".

(2) **Regulation 53(9)(a)** states: the appropriate authority shall not grant a licence unless they are satisfied "that there is no satisfactory alternative".

(3) **Regulation 53(9)(b)** states: the appropriate authority shall not grant a licence unless they are satisfied "that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range."

We trust this response is sufficient for your Authority to be clear about Natural England's position and that we stand by our previous advice. The decision and responsibility rests entirely with your Authority on whether to grant permission and confirmation that proposed non-licensable method statement will not offend against Article 12 of the Habitat Directive. The applicant and his ecologist also have the responsibility to ensure that they are compliant with the 2010 Habitat Regulations once permission has been granted (should permission be granted) throughout the construction and post construction process.

#### **VIEWS OF TOWN/PARISH COUNCIL**

The Town Council has no objections to this application. The application has a large basement that will require the removal of a large amount of soil, the Town Council ask that this is removed safely from the site with as little disruption to the residents as possible. The Town Council ask that if approval of the plan is granted that any conditions put on the application by Cheshire East are enforced, especially with regard to the protection of the Great Crested Newt population on the site.

#### **OTHER REPRESENTATIONS**

The application has generated significant correspondence, initially expressing the concerns below:

- Question the ability of the proposed surface of the driveway to carry heavy traffic without impact on trees
- Large trucks would not be able to safely access site without damage to trees due to width of drive
- Adverse impact on Great Crested Newts
- Bias within ecological surveys
- No pond survey at neighbouring property

- Inaccuracies within GCN survey data
- Access being sited on a 'dangerous' bend
- Design out of character with the area
- Excessive height of the proposal
- Previous approval removed permitted development rights for alterations to the roof
- Overbearing nature of the proposal
- Design not of a domestic scale rather a 'monster cottage'
- Overlooking of neighbouring garden
- Loss of garden land
- Excessive roof height and scale of the proposed bungalow
- The Council should not be wasting money by accepting a further application on this site
- Impact that basements have on the local water table
- Conflict between the tree protection measures and the Great Crested Newt mitigation strategy

In addition, two petitions have been submitted, one with approximately 94 signatures and one with approximately 57 signatures.

The neighbours at number 6 Heath End Road have also expressed numerous concerns about the application and have commissioned reports on the effect of the development on the protected trees that question the reports put forward by the applicant. These issues are addressed in the body of the report.

## OFFICER APPRAISAL

### Principle of Development

#### National Planning Policy Framework

The National Planning Policy Framework states the following:

*"At the heart of the National Planning Policy Framework is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision taking.*

*For **decision taking** this means:*

- *Approving development proposals that accord with the development plan without delay; and*
- *Where the development plan is absent, silent or relevant policies are out-of-date, granting planning permission unless:*
  - *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against policies in this Framework taken as a whole;*
  - or
  - *specific policies in this framework indicate development should be restricted*

The site is designated as being within Settlement Zone Line of Alsager and as such there is a general presumption in favour of development provided it is in keeping with the Town's scale and character and does not conflict with other policies of the local plan.

This proposal is for one dwelling, of a split level design with a detached garage. In 2011, Committee resolved to grant consent for a detached bungalow with detached garage on a very similar footprint and with a very similar roof height to that proposed, albeit with an increase in the eaves height. This proposal would create a dwelling with a much increased level of accommodation; however, externally the visible massing would be very similar to that approved. Given these factors, the proposal is considered to be acceptable in principle.

### **Layout and Scale**

The proposal is for a detached split level dwelling that would be sited in the north eastern part of the site. The surrounding development has varying layout patterns including semi-detached properties in a linear form and large detached dwellings set in substantial plots. Concerns have been expressed over the size of the proposed building, however it should be noted that the ground floor footprint would be very similar to that approved and a large proportion of the rooms would be accommodated in the roof space and underground. As such it is considered that its external appearance would be in keeping with the character of the surrounding development. It is therefore considered that the proposed development would not be out of keeping with the character and appearance of the area. It is therefore considered that the layout and scale would be acceptable.

### **Appearance**

The proposal is for a building that would be constructed of rendered blockwork with stone plinth details and window surrounds and Staffordshire Blue/black clay roof tiles. As stated previously, the proposal would provide a much increased level of accommodation, however this would be mostly within the roof space and basement, minimising its visual impact. Overall given the variety of property designs in the vicinity of the site including bungalows and two-storey properties it is not considered that the design of the proposed dwelling would be out of keeping with the character of the area.

Concerns have been raised over the height of the building; however the height would not exceed that already approved by Committee. As indicated previously, the additional accommodation is achieved through a reduction in land levels across the site. The submitted plans show a reduction in land levels of between 0.2m – 1.1m across the site. Due to the existing sloping nature of the site, it is not considered that these reductions will cause any significant harm to the character of the area.

As such in terms of appearance this is not considered to be a reasonable reason for refusal of the application.

### **Amenity**

There are four residential properties that share a boundary with the site, numbers 6 and 8 Heath End Road, number 21 Rydal Way and number 21 Pikemere Road and the impact on the amenities of these properties must be given careful consideration in the determination of this application. Number 8 Heath End Road would be in excess of 40 metres away from the proposed dwelling and it is therefore considered that there would not be an adverse impact on the residential amenities of this property. Having regard to number 6 Heath End Road, the

nearest window facing this property would be in excess of 22 metres away and as such would meet the requirements of Supplementary Planning Document 2: Private Open Space. Number 21 Rydal Way would also be in excess of 22 metres away from the proposed new dwelling and having regard to this property, it is not considered that there would be any adverse impact on the amenities of its occupiers. The dwelling would be partly sited adjacent to the rear garden of 21 Pikemere Road, however given the length of this garden and the provision of suitable boundary treatments, it is not considered that there would be any significant adverse impact on the amenities of the occupiers of this property.

### **Highways**

The Strategic Highways Manager has submitted no objections to this proposal on highway safety grounds, subject to a properly constructed vehicle crossing. It should be noted that a previous application was subject to appeal in 2002 (33264/3). This appeal was dismissed and one of the reasons given was that there would be an adverse impact on highway safety. However that proposal was for 5 dwellings and the Inspector emphasised that the number of dwellings proposed informed her decision, as such given that this proposal is only for 1 dwelling and in the absence of objections from the Strategic Highways Manager, it is considered that a refusal on these grounds would not be sustainable.

### **Ecology - Protected Species & Nature Conservation**

The site has been identified as containing a habitat for Great Crested Newts and reports have been submitted to inform the assessment of this issue. The Nature Conservation Officer has visited the site and assessed the submitted reports. The conclusions drawn from this are that provided that the mitigation proposals are completed in full, adverse impacts on protected species will be negligible and in particular the viability of the Great Crested Newt population at the location should be sustainable. The habitat enhancements must however be secured for the longer term by completion of a Section 106 Agreement ensuring that the future management of this part of the site will be controlled.

Natural England have also commented on this application and stated that the methodologies to be employed by the applicant's ecologist would require a licence. This has been challenged by the applicant in his additional ecology report which highlights the fact that the decision to grant planning permission lies with the Local Planning Authority and that his ecologist considered that a license would not be required. This conclusion and the proposed mitigation have been assessed by the Council's ecologist both in terms of this application and the previous approval (11/0217C) and are considered to be acceptable. As with the previous approval it is recommended that this is secured by a Section 106 legal agreement.

Natural England has submitted additional comments (as detailed above) stating that the previous response was provided for advice only, to a local councillor who had contacted them. They maintain that the advice they gave was consistent with the written guidance on their website, but that a planning authority is a competent authority for the purposes of the regulations and that they are not obliged to take the advice of Natural England. This response also makes clear that the applicant and his ecologist also have the responsibility to ensure that they are compliant with the 2010 Habitat Regulations once permission has been granted.

A protected species report was submitted with the application, which identified the presence of a Great Crested Newt eggs in Pond 1.



In the absence of mitigation / compensation, the proposed development would have a significant adverse impact upon Great Crested Newts through degradation of the pond within the site during construction and if the land is managed as a domestic garden and excessively tidied contrary to Natural England Guidelines.

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

(a) 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

(b) no satisfactory alternative and

(c) no detriment to the maintenance of the species population at favourable conservation status in their natural range

The UK has implemented the Directive in the Conservation (Natural Habitats etc) Regulations 2010 (as amended) which contain two layers of protection (i) a requirement on Local Planning Authorities ("LPAs") to have regard to the Directive's requirements above, and (ii) a licensing system administered by Natural England and supported by criminal sanctions.

Local Plan Policy NR2 states that proposals for development that would result in loss or damage to any site or habitat supporting species that are protected by law will not be permitted.

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."

The NPPF advises LPAs to conserve and enhance biodiversity: if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts) or adequately mitigated, or as a last resort, compensated for, planning permission should be refused.

Natural England's standing advice is that, if a (conditioned) development appears to fail the three tests in the Habitats Directive, then LPAs should consider whether Natural England is likely to grant a licence: if unlikely, then the LPA should refuse permission: if likely, then the LPA can conclude that no impediment to planning permission arises under the Directive and Regulations.

In this case it is considered that, in the absence of the satisfactory mitigation/ compensation, the proposed development has the potential to have a localised adversely impact on a European protected species, namely Great Crested Newt (GCN).

The outline mitigation proposals have been reviewed by the Council's ecologist and who is satisfied subject to further agreement on the detail, that the proposed measures will provide

satisfactory compensation, and that the conservation status of the local population will not be diminished and may well be enhanced. The site currently offers suboptimal opportunities for GCN, and based on completed surveys numbers on site are at best low.

The mitigation measures for Great Crested Newts and breeding birds as set out in the supporting ecological appraisal report shall be implemented in full and this should be controlled by condition. Details of the GCN mitigation proposals, including the design of the new pond, restoration of existing pond, habitats enhancements and creation of amphibian hibernacula will need to be agreed with the Council prior to commencement of development.

Natural England has stated that a more detailed strategy is required and that the Council will need to ensure the strategies to be employed, sufficiently mitigate against impacts on GCN. This will be secured by condition and the s106 Agreement.

#### *Overriding Public Interest*

There is a pond within the site which is identified in the GCN survey as being below average suitability to host Great Crested Newts. If the site is not developed it is possible that the suitability may deteriorate further and if the requirements of the Section 106 Agreement linked to application 11/0217C are applied to this proposal the habitat would be enhanced and preserved.

#### Alternatives

There is an alternative scenario that needs to be assessed, this is:

- No development on the site and the habitat deteriorating further.

#### *No Development on the Site*

There would be no requirement to manage the site and provide the additional pond, which would not be of benefit to the Great Crested Newt population.

Concerns have been raised about the impact of excavations for the basement on the water table and in turn on the pond. The Section 106 Agreement would ensure that should the pond be affected adversely, steps would have to be taken to address this.

#### **Trees and Landscape**

There is an area of woodland and two trees subject to Tree Preservation Orders on the site and therefore an important issue relating to this application is the impact of the access road on these protected trees. The public inquiry that was held into a previous application (33264/3), concluded that a satisfactory method of construction could be achieved that would not adversely impact on the health of these trees.

A Method Statement has been submitted with the application detailing proposed works to the trees, their protection during construction, and the specification for the driveway including special construction techniques. During the application process some changes were made to this at the request of the Landscape Officer. The measures laid down in the Method Statement are considered to be acceptable and will serve to protect the health of the trees. It is also considered necessary to impose conditions requiring submission of detailed landscape plans for the site.

It has been highlighted that newt fencing could damage the roots of trees on the site. The purpose of burying the fence by 20 cm is to stop Great Crested Newts from “burrowing” under the fence. This can be achieved by careful hand digging in the outer areas of the root protection zone and where necessary turning the base of the fence outwards and burying it with locally sourced material. As such this method is considered to be acceptable.

The Principal Forestry and Arboricultural Officer of the Council has carefully assessed all the submitted information, both from the applicant, and that commissioned by the neighbour and is satisfied that the construction of the driveway/ tree protection measures can reasonably be dealt with by condition satisfying the tests in Circular 11/95.

## **LEVY (CIL) REGULATIONS**

In order to comply with the Community Infrastructure Levy (CIL) Regulations 2010 it is now necessary for planning applications with legal agreements to consider the issue of whether the requirements within the S106 satisfy the following:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

As explained within the main report, securing the protection of the habitat of the Great Crested Newts would help to make the development sustainable and is a requirement of local plan policies and the NPPF. It is directly related to the development and is fair and reasonable.

## **CONCLUSIONS AND REASONS FOR THE DECISION**

In conclusion, the site is within the settlement zone line of Alsager in the adopted local plan and the proposed development complies with the relevant policies contained within that document. The proposal is of an appropriate scale and design and includes measures to ensure the continued viability of the habitat of Great Crested Newts. It is therefore recommended that the application be approved subject to the completion of a Section 106 Agreement ensuring that the future management of the site will be controlled and subject to the following conditions:

### **RECOMMENDATION:**

**Approve subject completion of a s106 Agreement to ensure that the Great Crested Newt Mitigation Strategy is implemented to ensure the future protection of the Great Crested Newt habitat and that the site is managed in accordance with that strategy going forward and the following conditions:**

- 1. Commence development within 3 years**
- 2. Development in accordance with agreed drawings**
- 3. Submission of details/samples of external materials**
- 4. Submission of a Phase 1 land contamination survey**
- 5. Limits on hours of construction (8am to 6pm Mon-Fri, 8am to 1pm Sat, no working Sun or public holidays)**
- 6. Limits on hours of piling (as above)**
- 7. Submission of detailed landscaping scheme**
- 8. Implementation of landscaping scheme**

- 9 Retention of trees shown as being retained on the submitted plans**
- 10 Submission and implementation of a drainage scheme**
- 11 Submission and implementation of tree protection scheme**
- 12. Submission of arboricultural method statement**
- 13. Submission and implementation of surveys and mitigation methods for the protection of breeding birds**
- 14. Submission and implementation of details of bat and bird boxes**
- 15. Compliance with the Great Crested Newt Mitigation Strategy**
- 16. Submission of additional details of GCN mitigation, including design of new pond, restoration of existing pond**

Application for Full Planning

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