



Northumberland County Council

Strategic Planning Committee
6 December 2022

ADDENDUM REPORT

Application Reference:

22/02627/CCD

Proposal:

Construction of new school buildings, sports centre, external sports pitches, landscaping, parking and access at Land North of The Avenue, Seaton Delaval and parking and access at former Whytrig Middle School Site, Western Avenue, Seaton Delaval (amendment to red line boundary 27.20.2022)

Site Address:

Land East Of Allenheads/Former Whytrig Middle School
The Avenue
Seaton Delaval
Northumberland

Applicant:

Northumberland County Council

Agent:

DPP Planning

RECOMMENDATION:

That members GRANT permission subject to referral to the secretary of state under The Town and Country Planning (Consultation) (England) Direction 2021 and the conditions listed in the main report and those listed in the addendum report.

1. Introduction

- 1.1 The application was minded to grant permission subject to the findings of the Ecology Report and Biodiversity enhancements and conditions. The recommendation has now been changed due to the following:

- Under The Town and Country Planning (Consultation) (England) Direction 2021, as the application is within the Green Belt and over 1,000sqm the application must be referred to the secretary of state should the authority not propose to refuse planning permission.
- The County Ecologist has reviewed additional information received on 23rd November and now wishes to remove their objection subject to conditions.

1.2 Attached to this addendum is also a late representation received on 2nd December.

2. Ecology Response

2.1 *The response from the county Ecologist is as follows:*

***“Summary No objection subject to conditions - the proposed development may impact on protected or notable species, designated nature conservation sites or priority habitat in the absence of mitigation, which is proposed in the ecological report (Ecological Impact Assessment, Land at Seaton Delaval, OS Ecology 2022 V5) and (Great Crested Newt Mitigation, Land at Seaton Delaval, OS Ecology 2022 V2). This mitigation should be secured by condition. In accordance with planning policy the development should provide a net gain for biodiversity which can be achieved through the provision of a Landscape and Ecology Management Plan, secured through a planning condition.*”**

Appraisal

Following the submission of further information and discussions on this planning application we can now support the development as long as we can secure mitigation and enhancement by the use of planning conditions.

Populations of great crested newts are present in ponds approximately 200m from the site and New Hartley Ponds SSSI lies approximately 250m from the site and the latter is designated for its great crested newt populations. Great Crested Newts (GCN) from these ponds are likely to move through the site during dispersal periods and may overwinter on the rough grasslands, shrubs and woodlands within or adjacent to the site and potentially may be part of a wider metapopulation which use other nearby ponds and habitats in the area.

Populations of GCN in New Hartley Ponds and the ponds this side of the railway have been monitored closely over the years (including surveys this year to record current populations on the SSSI) The populations are very healthy at present and it is important to maintain the populations and hopefully expand them into suitable habitat such as proposed for this site. A European Species Mitigation Licence will be required from Natural England in order to develop this site.

Measures to mitigate impacts to other protected species and habitats and also achieve a net gain for biodiversity are also required and conditions for a

Landscape and Ecology Management Plan (LEMP) and a Construction Environmental Management Plan (CEMP) are also required.

Great Crested Newts

Recent case law has shown that where a planning application is likely to have implications for European protected species, explicit consideration must be given to the three tests enshrined in Regulation 55 of the Conservation of Habitats and Species Regulations 2017 (as amended), either in the Committee Report or, in the case of delegated decisions, in the Planning Officer's own notes.

The species protection provisions of the Habitats Directive, as implemented by the Conservation of Habitats and Species Regulations 2017 (as amended), contain three "derogation tests" which must be applied by Natural England when deciding whether to grant a licence to a person carrying out an activity which would harm a European Protected Species (EPS). Notwithstanding the licensing regime, the LPA must also address its mind to these three tests when deciding whether to grant planning permission for a development which could harm an EPS.

The "derogation tests" which must be applied for an activity which would harm a European Protected Species (EPS) are contained within the species protection provisions of the Habitats Directive, as implemented by the Conservation of Habitats and Species Regulations 2017 (as amended) are as follows: 1. that the action is for the purpose of preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature; 2. that there is no satisfactory alternative; and 3. that the action authorised will not be detrimental to the maintenance of the species concerned at a favourable conservation status in their natural range.

Regarding the first of these, the test of imperative reasons of overriding public interest seems to be considered to have been satisfied if a proposal meets an identified development need. This is a matter that needs to be considered as part of the determination of this application, but is obviously a planning matter rather than an issue requiring ecological advice.

The second concerns whether the development need which the application is seeking to meet can be met in any other way which has no or a lesser impact on the species concerned. There are two strands to this test;

- a) whether the development need could be met in a different way than through this particular application.*
- b) whether the development proposal itself could be re-configured or undertaken in such a way that it meets the same development need while having a lower impact on the population of protected species concerned.*

This application is to build a school for local children and its location and design is appropriate for this purpose. The design has also been developed to include appropriate mitigation for great crested newts. With regards to the third test, the conservation status of species will be taken as 'favourable' when:

- a. population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and
- b. the natural range of the species is neither being reduced for the foreseeable future, and
- c. there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.

With regards to test 3, the site is likely to support overwintering and migrating terrestrial populations of GCN and potentially small numbers of breeding GCN in ephemeral ponds in the arable fields. The requirement for a European Protected Species Mitigation Licence (EPSML) will prevent any direct harm and the provision of appropriate habitats and features shown within the Landscape Site Plan N862-ONE-ZZ-XX-DR-L-1001 PO3 and the Great Crested Newt Mitigation Report, which will be agreed as part of this planning application, will maintain and potentially expand the population of GCN on site. Therefore the third test for maintenance of favourable conservation status is met.

2.2 The following planning conditions should also be imposed to should planning permission be granted to secure mitigation and enhance the development for biodiversity:

Condition 1

Works to enable any part of the development shall not in any circumstances commence unless the local planning authority has been provided with either:

- a. licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 (as amended) authorising the specified activity/development to go ahead; or
- b. written justification by a suitably qualified ecologist confirming why a licence is no longer required

The development shall then only be carried out in accordance with all of the recommendations for mitigation and compensation set out in the reports and plans which details the methods for maintaining the conservation status of great crested newt, unless otherwise approved in writing by the local planning authority or varied by a European Protected Species licence subsequently issued by Natural England.

The measures specified include:

- *Fencing the site with amphibian Proof Fencing and trapping out great crested newts within the site (focussing on areas within 250m of the ponds as well as areas with grasslands, ruderal species scrub and trees) as described within the GCN mitigation strategy report V2 (OS ecology 2022) GCN trapped will be moved to a receptor area to the North of the site.*
- *A compensation Strategy has been designed to create appropriate habitat which is shown on the Landscape Site Plan N862-ONE-ZZ-XX-DR-L-1001 (Revision PO3). This includes a new pond designed for great crested newt, a smaller wildlife pond and two SUDs pond which may be used by the species.*

It also includes the creation of grassland, hedges and scrub to maintain habitat and corridors for movement within the site.

- Seven hibernacula will also be created for the species.*

Although monitoring is not required for the licence, the LPA will require monitoring of populations of GCN within the ponds created for the purposes of Biodiversity net gain.

Reason: To maintain the favourable conservation status of a European protected species.

Condition 2

A landscape and ecological management plan (LEMP) shall be submitted to, and be approved in writing by, the local planning authority prior to the commencement of the development. The content of the LEMP shall include the following.

- a) Description and evaluation of features to be managed.*

This will include all habitats including Wildlife Ponds, SUDs ponds, grassland habitats, wetland habitats, trees, hedges and areas of scrub and woodland as shown in the Landscape Site Plan. Details of species to be included must be set out and apart from the areas of ornamental planting and amenity/artificial grass shown on the plan, should be composed of species native to Northumberland and include fruit and berry bearing species.

It will also include details and locations of 7 hibernacula (Habitat piles), 10 bat boxes (at least 5 of these integrated into the buildings on site) 10 swift boxes integrated into the buildings on site

- b) Ecological trends and constraints on site that might influence management.*
- c) Aims and objectives of management.*
- d) Appropriate management options for achieving aims and objectives.*
- e) Prescriptions for management actions.*
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).*
- g) Details of ongoing management which is required to maintain the Landscaping for the duration of the development.*
- h) Details of the body or organization responsible for implementation of the plan.*
- i) Ongoing monitoring and remedial measures which must include GCN monitoring of the ponds in year 5 and 10 at a minimum.*

The LEMP shall also include details of the legal and funding mechanism(s) by which the longterm implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The approved plan will be implemented in accordance with the approved details.

Reason: to conserve and enhance the natural environment in accordance with the NPPF.

Condition 3

No development shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following.

- a) Risk assessment of potentially damaging construction activities.*
- b) Identification of “biodiversity protection zones”.*
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).to include avoidance of harm to breeding birds, amphibians, mammals and especially bats present within trees on or adjacent to the site.*
- d) The location and timing of sensitive works to avoid harm to biodiversity features.*
- e) The times during construction when specialist ecologists need to be present on site to oversee works.*
- f) Measures to control the spread and remove current populations of Montbretia, Wall Cotoneaster and Japanese rose from the site during construction of the development.*
- g) Responsible persons and lines of communication.*
- h) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.*
- i) Use of protective fences, exclusion barriers and warning signs. The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.*

Reason: To ensure that adverse effects on biodiversity from construction activities are avoided and minimised”.

3. Late representation

3.1 In summary, a late representation has been submitted with concerns relating to the following:

- Imposition of waiting restrictions on Western Avenue and Prospect Avenue / Manners Gardens
- Displacement of existing parking as a result of the Waiting restrictions
- Pedestrian access to the school grounds from Prospect Avenue
- Access from The Avenue

4. **Recommendation**

- 4.1 **That members GRANT permission subject to referral to the secretary of state under The Town and Country Planning (Consultation) (England) Direction 2021 and the conditions listed in the main report and those listed in the addendum report.**