

UTT/13/1862/FUL (HATFIELD HEATH)

(MAJOR)

PROPOSAL: Variation of condition 7 (requirement for a European Protected Species Mitigation Licence) on planning permission UTT/12/5349/FUL (erection of 14 no. dwellings and allotments) in order to review the requirement for a EPSM Licence and carry out alternative mitigation works

LOCATION: Land at Broomfields, Hatfield Heath

APPLICANT: Mr Ivan Butcher

EXPIRY DATE: 15 October 2013

CASE OFFICER: Samantha Wellard

1. NOTATION

1.1 Outside Development Limits, Metropolitan Green Belt, Tree Preservation Orders along the southern boundary

2. DESCRIPTION OF SITE

2.1 This application relates to a parcel of land of 0.95 hectares situated to the north of the existing housing development of Broomfields. The land is located directly to the north of the development limits of Hatfield Heath, within the Metropolitan Green Belt. It is used mainly as agricultural land with the western part previously being allotments, although it is clear that the land has not been formally used for allotment purposes for quite some time. The site is mainly level. There is a row of mature oak trees along the southern boundary of the site which are protected by Tree Preservation Orders, as well as a ditch. There is also a mature vegetation screen along the western boundary of the plot. There are open fields to the north and east. There are a number of overhead electricity lines across the field.

2.2 Planning permission has been granted at the site for the erection of 14 affordable dwellings with associated access and parking arrangements and allotments (reference UTT/12/5349/FUL).

3. PROPOSAL

3.1 Condition 7 of UTT/12/5349/FUL required that; *'The works shall be carried out in accordance with recommendations of Great Crested Newt Survey, dated 12 September 2012 which states that a European Protected Species Mitigation Licence is required prior to the commencement of works on site'*.

3.2 This application seeks to vary Condition 7 in order to review the requirement for the European Protected Species Mitigation Licence (EPSM) and to carry out alternative mitigation works.

4. APPLICANT'S CASE

4.1 It is no longer felt that a EPSM licence is required for the site as a) the previous recommendations were based on sub-optimal survey data and therefore a precautionary approach was advised and b) current survey data collected at the

appropriate time of year confirms that no great crested newts are likely to be utilising ponds within 250m of the site.

- 4.2 Great Crested Newt Surveys by The Ecology Consultancy, dated 02/07/13 – Given that no great crested newts were identified within 250m of the Broomfields site and that only a low population has been recorded within the wider area it is not considered that a EPSM is required for this site. This approach is strengthened by the fact that the impacts of the development are likely to be restricted to the construction phase only. Despite this the risk to individual newts cannot be entirely ruled out and therefore a mitigation strategy is proposed.

5. RELEVANT SITE HISTORY

- 5.1 UTT/12/5349/FUL Planning permission was conditionally granted for the erection of an affordable Housing Development consisting of 14 no. dwellings and allotments.

6. POLICIES

6.1 National Policies

National Planning Policy Framework

6.2 Uttlesford District Local Plan 2005

Policy GEN7 – Nature Conservation

7. PARISH/TOWN COUNCIL COMMENTS

- 7.1 Comments awaited

8. CONSULTATIONS

Essex County Council Ecology

- 8.1 The variation of condition 7 is acceptable, providing that adherence to the submitted mitigation plan and enhancements can be secured.

9. REPRESENTATIONS

- 9.1 The occupiers of 39 neighbouring properties notified via letter. Consultation period expires 7 August 2013.

10. APPRAISAL

The issue to consider in the determination of the application is:

A The impact of the proposal on protected species (Local Plan Policy GEN7)

- 10.1 Policy GEN7 of the Local Plan states that development that would have a harmful effect on wildlife will not be permitted unless the need for the development outweighs the importance of the feature of nature conservation. Where the site includes protected species, measures to mitigate and/or compensate for the potential impacts of development must be secured.
- 10.2 In addition to biodiversity and protected species being a material planning consideration, there are statutory duties imposed on local planning authorities. Section 40(1) of the Natural Environment and Rural Communities Act 2006 states “Every public

authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.” This includes local authorities carrying out their consideration of planning applications. Similar requirements are set out in Regulation 3(4) of the Conservation (Natural Habitats &c) Regulations 1994, Section 74 of the Countryside and Rights of Way Act 2000 and Regulation 9(5) of the Conservation of Habitats and Species Regulations 2010. Recent case law has established that local planning authorities have a requirement to consider whether the development proposals would be likely to offend Article 12(1), by say causing the disturbance of a species with which that Article is concerned, it must consider the likelihood of a licence being granted.

- 10.3 The tests for granting a licence are required to apply the 3 tests set out in Regulation 53 of the Habitats Regulations 2010. These tests are:
- The consented operation must be for “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”; and
 - There must be “no satisfactory alternative”; and
 - 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”.
- 10.4 The original ecological report produced which accompanied planning application UTT/12/5349/FUL concluded that the presence of a low population of great crested newts was identified during the survey and there are an abundance of records from within 500m of the site returned by the data search. Therefore the survey concluded that a European Protected Species Mitigation Licence would be required prior to the commencement of works on site and this was subsequently required via planning condition.
- 10.5 Since that time, further surveys have been undertaken. The agents ecologists suggest that a EPSM licence is no longer required for the site as a) the previous recommendations were based on sub-optimal survey data and therefore a precautionary approach was advised and b) current survey data collected at the appropriate time of year confirms that no great crested newts are likely to be utilising ponds within 250m of the site. This is supported by a Great Crested Newt Surveys by The Ecology Consultancy, dated 02/07/13.
- 10.6 Essex County Council Ecologists have no objection to the proposal. The variation of condition 7 is acceptable, providing that adherence to the submitted mitigation plan and enhancements can be secured. The update Great Crested Newt Survey dated 2nd July 2013 has been carried out in accordance with best practice guidance and demonstrates that Great Crested Newts are unlikely to be found within the site area. The small risk of harm to individuals is likely to be restricted to the construction phase. The precautionary mitigation plan is therefore appropriate and we accept an EPS licence will not be required.

11. CONCLUSION

The following is a summary of the main reasons for the recommendation:

- A Great Crested Newts will not be adversely affected by the development providing the submitted mitigation plan and enhancements are adhered to.

RECOMMENDATION – CONDITIONAL APPROVAL WITH S106 AGREEMENT

- (I) The applicant be informed that the committee would be mindful to refuse planning permission for the reasons set out in paragraph (III) unless by 31 March 2013 the freehold owner enters into a binding agreement to cover the matters set out below under Section 106 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, in a form to be prepared by the Assistant Chief Executive – Legal, in which case he shall be authorised to conclude such an agreement to secure the following:
 - (i) The provision and retention in perpetuity of all 14 units as affordable dwellings, administered by a Registered Social Landlord.
 - (ii) provision of allotments
 - (iii) pay the Council's reasonable costs

- (II) In the event of such an agreement being made, the Assistant Director Planning and Building Control shall be authorised to grant planning permission subject to the conditions set out below:

- (III) If the freehold owner shall fail to enter into such an agreement, the Assistant Director Planning and Building Control shall be authorised to refuse permission for the following reasons:
 - (i) No affordable housing
 - (ii) No provision of allotments

CONDITIONS:

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this decision.

REASON: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the approved plans as set out in the Schedule.

REASON: For the avoidance of doubt as to the nature of the development hereby permitted, to ensure development is carried out in accordance with the approved application details, to ensure that the development is carried out with the minimum harm to the local environment, in accordance with the Policies of the Uttlesford Local Plan (adopted 2005) as shown in the Schedule of Policies.

3. The development hereby permitted shall be constructed entirely of the materials details as shown on the schedule of materials the planning application form and as per the samples submitted with the application, unless otherwise agreed in writing by the Local Planning Authority.

REASON: In the interests of the appearance of the development, in accordance with Policy GEN2 of the Uttlesford Local Plan (adopted 2005).

4. Prior to the erection of the development hereby approved full details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority and these works shall be carried out as approved.

REASON: The landscaping of this site is required in order to protect and enhance the existing visual character of the area and to reduce the visual and environmental

impacts of the development hereby permitted, in accordance with Policies GEN2, GEN8, GEN7, ENV3 and ENV8 of the Uttlesford Local Plan (adopted 2005).

5. All hard and soft landscaping works shall be carried out in accordance with the approved details. All planting, seeding or turfing and soil preparation comprised in the above details of landscaping shall be carried out in the first planting and seeding seasons following occupation of the buildings, the completion of the development, or in agreed phase, whichever is the sooner, and any plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the local planning authority gives written consent to any variation. All landscaping works shall be carried out in accordance with the guidance contained in British Standards and the Arboricultural Implications Assessment and Tree Protection Plan Drawing Number 17635/901.

REASON: The landscaping of this site is required in order to protect and enhance the existing visual character of the area and to reduce the visual and environmental impacts of the development hereby permitted and the TPO trees to the southern boundary need to be protected, in accordance with Policies GEN2, GEN8, GEN7, ENV3 and ENV8 of the Uttlesford Local Plan (adopted 2005).

6. The dwellings hereby approved shall not be occupied until the roads and parking spaces have been constructed and surfaced in accordance with details which have been submitted to and approved in writing by the local planning authority.

REASON: IN order to ensure that adequate vehicular and pedestrian access is provided in the interest of highway safety in accordance with Policies GEN1, GEN2 and GEN8 of the Uttlesford Local Plan (adopted 2005).

7. The development (approved under UTT/12/5349/FUL) shall be carried out in accordance with Section 5 'Mitigation Strategy' of the Great Crested Newt surveys report (dated 2nd July 2013) in all respects, unless otherwise approved in writing by Uttlesford Local Planning Authority. The enhancement measures shall be permanently retained and maintained.

REASON: In the interest of the protection of the wildlife value of the site in accordance with Policy GEN7 of the Uttlesford Local Plan (adopted 2005).

8. No development or preliminary groundwork's of any kind shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the planning authority. All works shall be carried out in accordance with the approved scheme.

REASON: In the interests of archaeological protection in accordance with the NPPF and Policy ENV4 of the Uttlesford Local Plan (adopted 2005).