



Committee and date

South Planning Committee

19 August 2014

Development Management Report

Responsible Officer: Tim Rogers

email: tim.rogers@shropshire.gov.uk Tel: 01743 258773 Fax: 01743 252619

Summary of Application

Application Number: 14/01979/FUL	Parish:	Craven Arms
Proposal: Erection of bird hide and fencing to form red kite feeding area		
Site Address: Land At Secret Hills Discovery Centre Market Street Craven Arms Shropshire SY7 9RS		
Applicant: Mrs Laura Harvey		
Case Officer: Trystan Williams	email: planningdmsw@shropshire.gov.uk	

Grid Ref: 343491 – 282465



© Crown Copyright. All rights reserved. Shropshire Council 100049049. 2011 For reference purposes only. No further copies may be made.

Contact: Tim Rogers (01743) 258773

Recommendation: Grant permission subject to the conditions set out in Appendix 1.

REPORT

1.0 THE PROPOSAL

1.1 This application seeks full planning permission to erect a bird hide within an area enclosed by 2.4-metre high wire mesh fencing. The purpose is to provide visitors to the Shropshire Hills Discovery Centre with an opportunity to view red kites.

2.0 SITE LOCATION/DESCRIPTION

2.1 The site forms part of the Onny Meadows Country Park on the southern fringes of Craven Arms. These riverside water meadows are associated with the Discovery Centre to the north, and have surfaced paths providing public access around the fields, pools and woodland. The A49 trunk road runs a short distance to the west.

3.0 REASON FOR DELEGATED DETERMINATION OF APPLICATION

3.1 Under the Council's adopted 'Scheme of Delegation' the application must be determined by the planning committee because the site is currently owned by the Council and the development is unrelated to its statutory functions.

4.0 COMMUNITY REPRESENTATIONS

4.1 Consultee comments

4.1.1 Shropshire Council Flood and Water Management – comment:

Since the site is within the high risk flood zone (3) the floor of the bird hide should be set above any known flood level, or else the building should be relocated.

4.1.2 Shropshire Council Historic Environment (Archaeology) – no objection:

No comments in respect of archaeological matters.

4.1.3 Shropshire Council Public Protection – no objection:

Members of the public have raised concerns over the spreading of meat to feed the kites, and the potential for this to be dropped further afield and left to rot. However, it is anticipated that any small amount of feed not taken by the birds would be consumed by other animals within a short period of time.

4.1.4 The activities proposed are also unlikely to result in any significant increase in pests in the general locality, bearing in mind that pests such as rats will be present already as is to be expected in any rural setting. Furthermore, any increase in the number of birds is unlikely to have any effect on crop production or the suitability of the crop to be used in the human food chain since the increase would be low in relation to the current total population, and because food businesses are already aware that crops may be soiled and require appropriate treatment. This aspect is covered by Food Safety and Standards legislation and therefore needs no further consideration through the planning process.

4.1.5 Environment Agency – comment:

The application does not appear to trigger the need for direct consultation with the Environment Agency. However, because the site falls within Flood Zone 3 of a main river, the appropriate standing advice and comments from the Council's own Flood and Water Management Team should be taken into account.

- 4.1.6 Shropshire Council Highways Development Control – no objection:
All vehicular access would be via the existing entrance to and car park at the Shropshire Hills Discovery Centre, and the scheme would have no adverse effect on any County roads. However, since the site is bounded on one side by the A49, it may be appropriate to seek the views of the Highways Agency.
- 4.1.7 Highways Agency - no objection:
It is not anticipated that the proposed feeding station would raise any issues in relation to the strategic road network.
- 4.1.8 The feeding location would be some distance from the A49 and screened from view. Any sightings of the kites from the road would be as they soar above the landscape on thermals, and they would appear similar to the buzzard which is commonly seen along trunk roads and motorways. It is also understood that the national red kite population is growing thanks to a successful breeding and release programme.
- 4.1.9 No details of anticipated visitor numbers have been provided, but there is no proposal to provide additional parking at the Shropshire Hills Discovery Centre and the nature of the proposal is unlikely to attract vast numbers of people.
- 4.1.10 Shropshire Council Ecology – no objection:
Given the small scale of the development and the fact that the area is used for public recreation already, application of Natural England's 'Rapid Risk Assessment Toolkit' reveals that the risk of an offence being committed in respect of great crested newts is highly unlikely. As such no ecological surveys are required, although as a precaution informatives should be included in respect of working practices and the newts' legal status.
- 4.2 **Public comments**
- 4.2.1 Four members of the public object on the following grounds:
- Distorting the natural local population of these birds would be exploitation of a wild, protected species for commercial gain. Whereas existing feeding stations in Wales were established at a time when kite populations were dangerously low, this is no longer the case and the population here is now higher than could be sustained naturally. Meanwhile the population in south Shropshire is increasing already without assistance.
 - It will not be possible to limit the number of kites as claimed, since 25 additional well-fed adult birds will inevitably result in many chicks being reared each year.
 - The volunteers behind the project may not have the will or resources to continue feeding the birds long-term, 365 days a year, even when the Discovery Centre itself may be closed. Large scavenging raptors like kites quickly become wedded to a feeding station and will soon be arriving at feeding times regardless of whether or not food is available. It is ecologically unsound to aim to feed birds irregularly.
 - Kites may be forced to find food from other sources, e.g. scavenging from gardens and the local schoolyard. They are also known to eat curlew and lapwing chicks, both of which are threatened and declining species, and may have an impact on other bird species at Onny Meadows.

- Concerns over the type of food to be used to attract the kites, where this will come from, whether adequate supplies are in place, and whether the relevant authorities have been contacted regarding spreading meat in the open.
- As soon as food stocks run low feeding behaviour will become more aggressive, resulting in meat unfit for human consumption being dropped in surrounding fields and gardens, as well as across the planned community allotments within Onny Meadows. This will attract rodents and scavenging birds, which will also defecate over these areas.
- Meat dropped by the kites would also pose a danger to dogs and other household pets.
- Notwithstanding the consultee comments regarding highway safety, in Wales drivers parking on the roadsides to watch kites cause an obstruction.
- The site notice has been erected within Onny Meadows itself, rather than alongside the Discovery Centre where the general public would have seen it.

5.0 THE MAIN ISSUES

- Principle of development
- Design and landscape impact
- Ecology
- Residential amenity and public health
- Highway safety
- Flood risk
- Procedural matters

6.0 OFFICER APPRAISAL

6.1 Principle of development

6.1.1 Core Strategy Policy CS16 supports new and extended tourism, cultural and leisure development in appropriate locations, particularly where it would enhance the role of market towns and/or promote connections between visitors and the natural environment. In this case the site is peripheral to one of south Shropshire's larger, 'sustainable' settlements. Comprehensive visitor facilities are available already within the adjacent Discovery Centre, and the proposed scheme would complement the aim for this popular attraction to explore the interaction of man with the produce, heritage and landscape of the Shropshire Hills. The use of the Onny Meadows themselves for recreational purposes coupled with nature conservation is also well established, and for these reasons the bird hide and associated development are considered acceptable in land-use terms. The 'need' for the scheme in conservation terms is not a planning matter, and it should also be noted that bird-feeding displays would not in themselves require planning permission.

6.2 Design and landscape impact

6.2.1 The hide would be a small (4.7 x 2 metres; 2.5 metres high to the apex) timber-clad structure which, set against the backdrop of an existing wooded area to the west, would not detract from the generally open character of the landscape. The high perimeter fence is necessary to secure the feeding area (as explained below this is subject to licencing, so public access must be restricted) and, whilst not particularly attractive at close range, would be transitory and reasonably unobtrusive in longer distance views.

6.3 **Ecology**

6.3.1 The public opposition to the scheme relates in part to the welfare of the kites and their potential effects on other species. However, given that the minor operational development is in itself unlikely to have any *direct* impact either on kites or other legally protected species, the merits and ethics of feeding the birds are generally beyond the local planning authority's remit. Indeed the RSPB, AHVLA, local ornithologists and other kite feeding centres have advised on the project from the outset, and feeding will be licenced under EEC legislation and policed through regular statutory inspections. This is to protect not only the kites themselves but also the surrounding countryside, in recognition of the need to avoid the spread of maladies and conserve other species. In this last respect it should also be noted that there are few if any pairs of lapwing or curlew in the vicinity, although an increase in kite numbers could in fact prove beneficial since kites feed on young crows and magpies which are the most significant avian predators of ground-nesting birds.

6.3.2 The ongoing ability of the site operator to continue feeding the kites is not a planning matter, although there is no reason to suppose that the Discovery Centre and its associated ventures will not remain well managed and successful. Ultimately if the Centre did fail to meet its obligations the project would be in danger of losing its credibility and feeding licence. In any event kites are unlikely to become dependent on the feeding centre, with the Welsh experience having demonstrated that restricting the amount of food available helps to maintain the birds' ability to feed naturally.

6.4 **Residential amenity and public health**

6.4.1 Given the site's distance from the nearest residential properties the development itself would cause no demonstrable harm in terms of privacy, light or outlook, although it may just be discernable from the rear of certain dwellings on the edge of Craven Arms.

6.4.2 Regarding concerns over the spreading of raw meat, EEC legislation dictates that this would be sourced from a licensed meat-handling operation such as an abattoir, and fit for human consumption. It would, therefore, pose no risk to public health or domestic pets, even if small amounts were occasionally carried away and dropped by the birds. In the latter case the Council's Public Protection Officer is satisfied that there is unlikely to be any significant increase in vermin, and this seems even less likely given that the kites themselves might scavenge from urban areas as is also claimed by some of the objectors.

6.4.3 The Public Protection Officer is also content that there is no danger of bird faeces entering the human food chain, given the other legislation which applies to crop production.

6.5 **Highway safety**

6.5.1 As noted above neither the Highways Agency nor the Council's Highways Development Control Team raises any objection on highway safety grounds. The kites are considered unlikely to cause undue distraction to motorists taking reasonable care for their own and other road users' safety, and the feeding station

is unlikely to give rise to large volumes of traffic given its small scale. In any case parking is available at the Discovery Centre and elsewhere in Craven Arms, and roadside parking would not be possible along the A49 (except in the layby just north of Stokesay, which would be perfectly legal).

6.6 **Flood risk**

6.6.1 Although the site is within the high risk flood zone as designated by the Environment Agency, it is not necessary to apply the 'sequential' and 'exception' tests as set out within the Government's National Planning Practice Guidance since the use of the development is classed as 'water compatible'. Furthermore, the Council's Flood and Water Management Team is satisfied that a formal flood risk assessment is not required given the small scale of the development, the applicant's confirmation that the hide would be sited above previously recorded flood levels, and the fact that it would not reduce the water-holding capacity of the land in any case.

6.7 **Procedural matters**

6.7.1 The application site notice was erected on the perimeter of the site itself, alongside a footpath with public access. The Discovery Centre itself, whilst under common ownership/management, does not form part of the application site, although it is understood that a duplicate notice was in fact displayed at the exit door.

7.0 **CONCLUSION**

7.1 The principle of the development is acceptable in planning terms since it relates to an established recreational/nature conservation use. There would be no significant effect on landscape character, and there are no undue concerns in respect of highway safety or flood risk. Furthermore, the development itself is unlikely to have any direct impact on protected species, whilst broader ecological issues, along with public health concerns, are subject to separate legislation outside the planning system. The application therefore accords with the principal determining criteria of the relevant development plan policies and approval is recommended, subject to conditions to reinforce the critical aspects.

8.0 **RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL**

8.1 **Risk management**

8.1.1 There are two principal risks associated with this recommendation as follows:

- As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.
- The decision may be challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than three months after the grounds to

make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

8.2 **Human rights**

8.2.1 Article 8 of the First Protocol of the European Convention on Human Rights gives the right to respect for private and family life, whilst Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the community.

8.2.2 Article 1 also requires that the desires of landowners must be balanced against the impact of development upon nationally important features and on residents.

8.2.3 This legislation has been taken into account in arriving at the above decision.

8.3 **Equalities**

8.3.1 The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in Planning Committee members' minds under section 70(2) of the Town and Country Planning Act 1970.

9.0 **FINANCIAL IMPLICATIONS**

9.1 There are likely financial implications if the decision and/or imposition of conditions are challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependent on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – insofar as they are material to the application. The weight given to this issue is a matter for the decision maker.

10.0 **BACKGROUND**

Relevant Planning Policies:

National Planning Policy Framework:

Part 3: Supporting a prosperous rural economy

Part 7: Requiring good design

Part 8: Promoting healthy communities

Part 10: Meeting the challenge of climate change, flooding and coastal change

Part 11: Conserving and enhancing the natural environment

Shropshire Local Development Framework Adopted Core Strategy Policies:

CS3: The Market Towns and Other Key Centres

CS5: Countryside and Green Belt

CS6: Sustainable Design and Development Principles

CS7: Communications and Transport

CS8: Facilities, Services and Infrastructure Provision
CS13: Economic Development, Enterprise and Employment
CS16: Tourism, Culture and Leisure
CS17: Environmental Networks
CS18: Sustainable Water Management

Relevant Planning History:

SS/1/8319/P – Provision of Shropshire Hills Discovery Centre, associated cafe and teaching facility, landscaped car parking and alterations to existing access (permitted June 1998)

List of Background Papers:

Application documents available to view on Council website

Cabinet Member (Portfolio Holder):

Cllr M. Price

Local Members:

Cllr Lee Chapman
Cllr David Evans

Appendices:

Appendix 1 – Conditions and informatives

APPENDIX 1 – CONDITIONS AND INFORMATIVES

STANDARD CONDITIONS

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

Reason: To comply with Section 91(1) of the Town and Country Planning Act, 1990 (As amended).

2. The development shall be carried out in strict accordance with the approved plans and drawings unless any minor amendments are agreed in writing by the Local Planning Authority.

Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and details.

CONDITIONS RELEVANT FOR THE LIFETIME OF THE DEVELOPMENT

3. Unless first agreed otherwise by the local planning authority in writing, the external materials of the bird hide hereby permitted shall be as specified in the planning application form (i.e. unstained softwood weatherboarding and corrugated roof sheets finished in black or Laurel/Juniper green), and shall be maintained thereafter.

Reason: To safeguard the visual amenities of the open countryside, in accordance with Policies CS6 and CS17 of the Shropshire Local Development Framework Adopted Core Strategy.

INFORMATIVES

1. In arriving at this decision the Council has used its best endeavours to work with the applicant in a positive and proactive manner to secure an appropriate outcome as required in the National Planning Policy Framework paragraph 187.
2. Great Crested Newts are European Protected Species under the Habitats Directive 1992, the Conservation of Species and Habitats Regulations 2010 and the Wildlife and Countryside Act 1981 (as amended). Should a great crested newt be discovered on site at any point during the course of development work must halt and Natural England should be contacted for advice.
3. Wherever possible any trenches formed as part of the construction work should be excavated and closed during the same day in order to prevent wildlife becoming trapped. If it is necessary to leave a trench open overnight it should be sealed with a close-fitting plywood cover or provided with a means of escape in the form of a shallow-sloping earth ramp, board or plank. Any open pipework should be capped overnight, and all open trenches or pipework should be inspected for trapped animals at the start of each working day.

4. All storage of building materials, rubble, bricks and/or soil should be either on pallets or in skips or other suitable containers, in order to avoid use as refuges by wildlife which could then become trapped.