



Committee and Date  
 North Planning Committee  
 23 September 2014

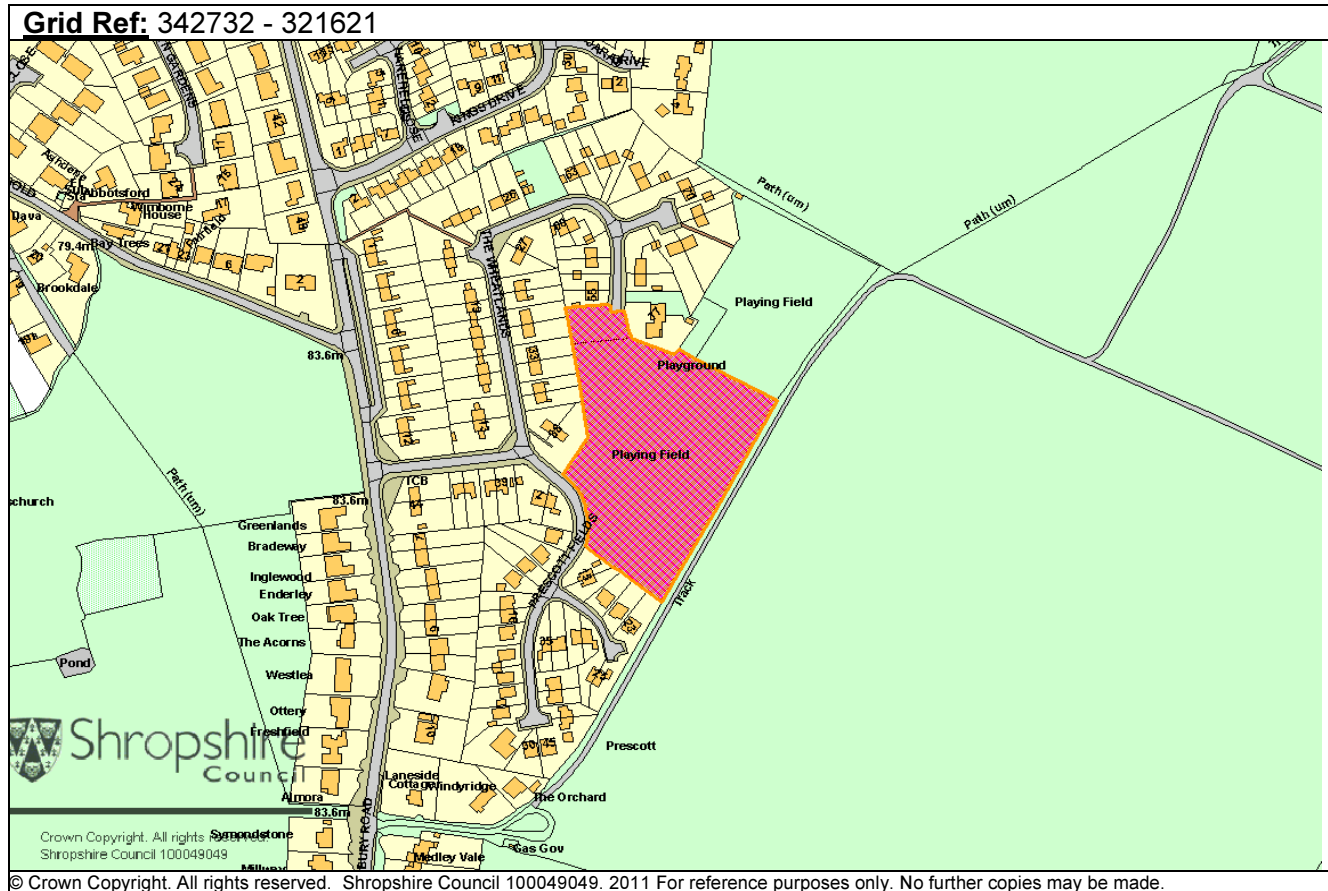
Item  
**12**  
 Public

## Development Management Report

Responsible Officer: Tim Rogers  
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### Summary of Application

<b>Application Number:</b> 14/02718/VAR	<b>Parish:</b>	Baschurch
<b>Proposal:</b> Variation of Conditions 6 and 7 of planning permission 12/02314/OUT Conditions relate to protected species (Great Crested Newts) which no longer appear to be present at the site		
<b>Site Address:</b> Land At The Wheatlands Baschurch Shropshire		
<b>Applicant:</b> Shropshire Council		
<b>Case Officer:</b> Richard Denison	<b>email:</b> <a href="mailto:planningdmne@shropshire.gov.uk">planningdmne@shropshire.gov.uk</a>	



**Recommendation:- That planning permission be granted subject to the conditions set out in Appendix 1.**

## REPORT

### 1.0 THE PROPOSAL

- 1.1 This application relates to the removal of two conditions regarding a Great Crested Newt Mitigation Strategy and provision of a European Protected Species Mitigation Licence in relation to an outline residential development scheme which was approved in February 2013 in Baschurch.

### 2.0 SITE LOCATION/DESCRIPTION

- 2.1 The site is located on the eastern edge of Baschurch village directly adjacent to residential development to the north, east and south of the site. The site is generally level with open farm land to the east and an existing playing field to the north. Access is gained from a cul-de-sac to the north at the end of The Wheatlands estate, whilst part of the south western boundary runs along part of the Prescott Fields estate road.

### 3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 This is an application made by the Council in relation to land owned by the Council which not proposing development for a statutory function.

### 4.0 COMMUNITY REPRESENTATIONS

#### 4.1 Consultee Comments

- 4.1.1 **Shropshire Council, Highways Development Control** - The proposed variation raises no highway implications and the Highway Authority raises no objection to the proposal.
- 4.1.2 **Shropshire Council, Planning Ecologist** - In April and May 2014 Eco Tech (2014) carried out four presence/absence great crested newt (GCN) surveys of a garden pond at the north west of the site. No GCN or other amphibians were found. This pond was found to contain a small GCN population in 2010, which resulted in consent 12/02314/OUT having conditions requiring an EPS licence and following a mitigation scheme.

In 2014 the pond was found to contain a high population of ornamental fish, said by the owner to have been introduced in 2011. Eco Tech (2014) consider it likely that since 2011 many, if not all of the GCN will have dispersed from the pond. They consider that a mitigation licence is no longer required. Condition 7 can therefore be removed from the outline consent.

Reasonable precautions to avoid affecting GCN are recommended in a method statement. Eco Tech (2014) recommend measures to promote favourable conservation status of GCN in the locality. These include creation of two new potential breeding ponds and enhancement of terrestrial habitat around the new ponds.

In order to secure both of these items it is recommend varying condition 6 as follows: “Work shall be carried out strictly in accordance with the Great Crested Newt Survey and Revised Mitigation Strategy by Eco Tech dated June 2014. Reason: To ensure the protection of great crested newts, a European Protected Species.”

4.1.3 **Shropshire Council, Flood and Water Management Team** - The variation is acceptable from a drainage and flood risk perspective.

4.1.4 **Shropshire Council, Historic Environment Team (Archaeology)** - I have no comments to make on this application with respect to archaeological matters.

4.1.5 **Shropshire Council, Affordable Housing Officer** - As the variation does not alter the proposals re housing then our previous comments stand.

4.1.6 **Baschurch Parish Council** supports the application.

## 4.2 Public Comments

4.2.1 No public representations have been received.

## 5.0 THE MAIN ISSUES

- Background & Ecology Issues

## 6.0 OFFICER APPRAISAL

### 6.1 Background & Ecology Issues

6.1.1 Outline planning permission was granted on the 8<sup>th</sup> February 2013 for a residential development on land between Prescott Fields and The Wheatlands in Bashurch (application reference 12/02314/OUT). The following conditions were attached to the planning permission in relation to Great Crested Newts:-:

Condition 6 - Work shall be carried out strictly in accordance with the Great Crested Newt Mitigation Strategy by Eco Tech (November 2012) and as shown on Map 1 included within the Mitigation Strategy attached as an appendix to this planning permission. Reason: To ensure the protection of Great Crested Newts, a European Protected Species.

Condition 7 - No development, demolition or site clearance procedures shall commence until a European Protected Species (EPS) Mitigation Licence with respect to Great Crested Newts has been obtained and submitted to the local planning authority for the proposed work prior to the commencement of works on the site. Work shall be carried out strictly in accordance with the granted EPS Mitigation Licence. Reason: To ensure the protection of Great Crested Newts, a European Protected Species.

6.1.2 These conditions were based on the fact that the proposed development affected land within 100 metres of a pond (in a private rear garden beyond the application

site boundary) where great crested newt breeding was confirmed in 2010. An update of the Great Crested Newt Survey was commissioned in April and May 2014 in order to establish any change in the status of this protected species at the site. The updated survey provided findings that no Great Crested Newts (or any other amphibian species) were recorded. The pond was found to support a high population of various ornamental fish species which were introduced into the pond in 2011, and there is no longer a presence of great crested newts.

- 6.1.3 Policy CS17 'Environmental Networks' of the Shropshire Core Strategy indicates that development will identify, protect, expand and connect Shropshire's environmental assets to create a multifunctional network and natural and historic resources. This will be achieved by ensuring that all development protects and enhances the diversity, high quality and local character of the natural environment and does not adversely affect the ecological value of the assets, their immediate surroundings or their connecting corridors. This is reiterated in national planning guidance in policy 11 'Conserving and Enhancing the Natural Environment' of the National Planning Policy Framework. This indicates that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, minimising impacts on biodiversity and providing net gains where possible.
- 6.1.4 Having regard that there are no Great Crested Newts presence and that they will have dispersed from the pond the Planning Ecologist has confirmed that no mitigation licence is required and therefore condition 7 can be removed from the planning permission. Reasonable precautions to avoid affecting Great Crested Newts are recommended in a method statement to promote favourable conservation status of Great Crested Newts in the locality. These include creation of two new potential breeding ponds and enhancement of terrestrial habitat around the new ponds. In order to secure both of these items it is recommend varying condition 6 to indicate that the development should be carried out strictly in accordance with the Great Crested Newt Survey and Revised Mitigation Strategy to ensure the protection of great crested newts, a European Protected Species.

## **7.0 CONCLUSION**

- 7.1 The principle for residential development has been established under the previous outline permission. The submitted Great Crested Newt Survey and Revised Mitigation Strategy have established that the proposed development is reasonably unlikely to result in an offence under Regulation 41 and therefore no licence is required. However, to avoid affecting Great Crested Newts the proposed Mitigation Strategy will be conditioned accordingly which will include the creation of two new potential breeding ponds.

## **8.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL**

### **8.1 Risk Management**

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 - written representations, a hearing or inquiry.

- The decision is 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 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

Article 8 give the right to respect for private and family life and First Protocol 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.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

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

## 8.3 Equalities

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

## 10.0 BACKGROUND

## 10.1 **Relevant Planning Policies**

Policies material to the determination of the Application. In determining this application the Local Planning Authority gave consideration to the following policies:-

### **National Planning Policy Framework (March 2012):**

11 : Conserving and Enhancing the Natural Environment

### **Shropshire Council Core Strategy (February 2011):**

CS17 : Environmental Networks

## 10.2 **Relevant Planning History**

12/02314/OUT - Outline application for proposed residential development; formation of new vehicular and pedestrian access (all matters reserved). Granted 8<sup>th</sup> February 2013.

## 11.0 **ADDITIONAL INFORMATION**

List of Background Papers - Application reference 14/02718/VAR

Cabinet Member (Portfolio Holder) - Cllr M. Price

Local Member - Cllr Aggie Caesar-Homden

Appendices

APPENDIX 1 - Conditions

## APPENDIX 1

### Conditions

#### STANDARD CONDITION(S)

1. Details of the access, appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

Reason: The application is an outline application under the provisions of Article 1(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2010 and no particulars have been submitted with respect to the matters reserved in this permission.

2. Application for approval of reserved matters shall be made to the local planning authority by the 8th February 2016.

Reason: This condition is required to be imposed by Section 92 of the Town and Country Planning Act, 1990.

3. The development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Reason: This condition is required to be imposed by Section 92 of the Town and Country Planning Act, 1990.

4. The following information shall be submitted to the local planning authority concurrently with the first submission of reserved matters:

- The number of units
- The means of enclosure of the site
- The levels of the site
- The means of access for disabled people
- The drainage of the site
- The finished floor levels

Reason: To ensure the development is of an appropriate standard.

5. The development site shall be as indicated on drawing no. 294-001-V29 received on the 28th May 2012.

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

6. Work shall be carried out strictly in accordance with the Great Crested Newt Survey and Revised Mitigation Strategy by Eco Tech dated June 2014.

Reason: To ensure the protection of great crested newts, a European Protected Species.

**CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES**

7. The residential development shall not begin until a written and binding scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and thereafter permanently retained. The scheme shall include:
- Type of the affordable housing provision to be made.
  - The timing of the construction of the affordable housing.
  - The arrangements to ensure that such provisions are affordable for both initial and subsequent occupiers of the affordable housing;
  - The occupancy criteria to be used for determining the identity of prospective and successive occupiers of the affordable housing and the means by which such occupancy shall be afforded.

Reason: In accordance with Policy CS11 of the Shropshire Core Strategy.

**CONDITION(S) THAT ARE RELEVANT FOR THE LIFETIME OF THE DEVELOPMENT**

8. Prior to the erection of any external lighting on the site a lighting plan shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter retained for the lifetime of the development. The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust booklet Bats and Lighting in the UK.

Reason: To minimise disturbance to bats, a European Protected Species.

**Informatives**

1. Where there are pre commencement conditions that require the submission of information for approval prior to development commencing at least 21 days notice is required to enable proper consideration to be given.
2. You are obliged to contact the Street Naming and Numbering Team with a view to securing a satisfactory system of naming and numbering for the unit(s) hereby approved. At the earliest possible opportunity you are requested to submit two suggested street names and a layout plan, to a scale of 1:500, showing the proposed street names and location of street nameplates when required by Shropshire Council. Only this authority is empowered to give a name and number to streets and properties, and it is in your interest to make an application at the earliest possible opportunity. If you would like any further advice, please contact the Street Naming and Numbering Team at Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND, or email: [snn@shropshire.gov.uk](mailto:snn@shropshire.gov.uk). Further information can be found on the Council's website at: <http://new.shropshire.gov.uk/planning/property-and-land/name-a-new-street-or-development/>, including a link to the Council's Street Naming and Numbering Policy document that contains information regarding the necessary procedures to be undertaken and what types of names and numbers are considered acceptable to the authority.