

APPLICATION NO: 14/00505/FUL	OFFICER: Mr Ian Crohill
DATE REGISTERED: 22nd March 2014	DATE OF EXPIRY: 17th May 2014
WARD: Up Hatherley	PARISH: Up Hatherley
APPLICANT:	Mr Jeremy Limbrick
AGENT:	No agent used
LOCATION:	Avenue Lodge, Chargrove Lane, Up Hatherley
PROPOSAL:	Garden landscaping

Update to Officer Report

For clarification, members are advised that this application is before Committee following the objection raised by the Parish Council and at the request of Councillor Whyborn.

1. OFFICER COMMENTS

1.1. Determining Issues

1.1.1. The application is described as garden landscaping and the application site is clearly part of the applicant's rear garden. Landscaping one's garden does not in itself normally require the benefit of planning permission, however, in this case the partial infilling of a pond forms a significant part of the initial ground works involved in the landscaping proposed. Due to scale of this infilling operation it is considered that planning permission is required for that element as it constitutes an engineering operation for which planning permission is required.

1.1.2. The main issues relevant to consideration of this application relate to the impact on neighbouring property and possible flooding issues.

1.2. Impact on neighbouring property

1.2.1. Policy CP4 in the Local Plan requires that development should respect the amenity of adjoining users/ occupiers. The current pond and its surrounding trees and vegetation is, in the main, screened from neighbours when viewed from their gardens by boundary fences, however, there are views over the pond and its 'natural' aspect from first floor windows.

1.2.2. In the 2010 appeal decision in respect of the proposal to construct a dwelling on stilts over the pond the Inspector had the following to say about the site: "*Although this is a private garden, it is highly valued locally as a tranquil green open space in the midst of the surrounding moderately high density residential development and for the wildlife it attracts..... The principal value of the garden in the wider surroundings derives from the mature trees which are visible from many viewpoints*". Several of the trees surrounding the pond are the subject of a Tree Preservation Order and the applicant has confirmed his intention to retain and manage the trees along with further planting as part of his garden landscaping project.

1.2.3. It is proposed to reduce the size of the pond as currently existing to approximately half its area and to landscape the surrounding land in a more formal way. It is not proposed to infill the whole of the pond and remove the feature entirely. Thus the comments made by the Inspector in 2010, whilst being of direct relevance to a redevelopment scheme, are not necessarily entirely of relevance in relation to the

current application. He did, however, note that the area provides an important environment for a variety of wildlife and he considered that this essential character should be protected. He expressed the view that there was a potential risk that the building (at that time proposed), especially during its construction and subsequently its associated domestic paraphernalia and activities, would disturb and displace much of the wildlife. The current application, however, does not involve the construction of any building; it proposes landscaping of the pond, albeit in a different form from that existing, but it should still support the general benefits for common and garden species that the pond currently brings to the biodiversity of the area.

- 1.2.4. It is fundamental to the consideration of this application to realise that the site (and thus the pond) is not afforded any statutory form of protection. It is the private rear garden of a long established house; the application site may impact beneficially, albeit perhaps by default, on the amenity of those occupiers of the limited number of residential properties surrounding the site but it is of no public benefit. It is also important to bear in mind that the Council's Tree Officer raises no objection to the proposal subject to certain conditions being imposed if permission is granted.

1.3. Possible Flooding Issues

- 1.3.1. The vast majority of the letters of objection received refer to the issue of possible flooding resulting from the in-filling of the pond and thus the loss of available flood storage capacity and the objection received from the Parish Council stems from their claim that infilling the pond will exacerbate flooding experienced in recent years.
- 1.3.2. The applicant had a flood risk assessment prepared in connection with his previous application for a dwelling over the pond and this has been resubmitted as an appendix to the current application which is accompanied by a Flood Risk Statement submitted as an update to that earlier Flood Risk Assessment. The 2009 FRA concluded that *"In accordance with the requirements of Planning Policy Statement 25 - Development and Flood Risk, the development may proceed without being subject to significant flood risk and without adversely affecting flood risk throughout the wider catchment"*.
- 1.3.3. The update report submitted with the current application concludes: *"based on the likely flood risk posed to and from the site, the fact that there are to be no changes to the impermeable areas, it is considered the proposed landscaping can be operated with up to the same level of risk as the existing operation at the site in flood risk terms"*.
- 1.3.4. In addition the comments of the Council's Senior Drainage Engineer have been sought. He comments as follows:

"There is no evidence to suggest that the pond within the grounds of Avenue Lodge serves any flood risk management purpose. There is no formal inlet to, or outlet from the pond and water levels within it are determined by the normal variations of groundwater. Such variations being associated with seasonal changes and the prevailing weather conditions.

Infilling the pond (partial or complete) will have no long term effect upon ground water levels as they will balance out with time. However, if permitted, infilling operations would displace the water impounded within the pond at the time. Such displacement would need to be managed to ensure that the surrounding land and property was not adversely affected.

In my view (subject to the appropriate management of displaced water during infilling operations), in the long term, the proposal will not increase flood risk upon the site or the surrounding land.”

- 1.3.5. In addition to the above the informal views of the Environment Agency have been sought. The normal practice of the Agency would not be to comment on the application as it falls outside their checklist for consultation, however, following a specific request the following comments have been received:

“.....the development is not one that would fall within our checklist for consultation, but I have double checked this and can elaborate as follows:

With regards to flood risk, the site is in Flood Zone 1 and of a small scale. There are also no main rivers, or any other watercourses, in the vicinity. I've had look at the Land drainage officer's comments and having looked at the matter I completely agree with his comments and advice. The points about managing the removal of water and the settling of any groundwater present also appear to be mentioned within the submitted FRA.

With regards to ground water and water quality, I note the applicant has submitted a Geo-Environmental Desk Study Report, but again we would not review the application for impacts on groundwater as, primarily, the site is not located upon an aquifer, and also it is less than the 2ha size threshold for our checklist and there is no indicative or suspected land contamination.

.....with regards to the actual infilling and deposit of material, the application has been validated as a District matter and not a County matter. As such I would not consider it as falling within our checklist as a 'waste' matter. I note the applicant has confirmed in the Design and Access Statement that the material to be deposited would be inert which is important. Any deposit of contaminated material would not be acceptable

So to conclude, the development is of a relatively low risk nature in terms of the environmental matters within our remit. As such it does not feature in our checklist for bespoke comments.....”

- 1.3.6. Professional advice is clear that the pond plays no flood storage capacity role and its infilling will not exacerbate any existing flooding issues which are in fact unrelated to the pond.

2. CONCLUSION AND RECOMMENDATION

- 2.1. Despite the volume of letters of objection received it should be borne in mind that the pond is not afforded any statutory protection. It forms part of a private rear garden and is not part of the public realm. Thus, whilst neighbours adjoining the site may be able to enjoy the benefits it offers in terms of attracting wildlife and providing a pleasant view, in reality those benefits are enjoyed by a small number of individuals. The site has no significance from the public perspective. The area undoubtedly provides for 'a relatively undisturbed environment for a variety of wildlife', however, the proposal is not to remove the pond but to re-landscape it. It should still support a variety of wildlife albeit possibly of a different type.
- 2.2. Professional advice indicates that despite what is alleged by local residents, the infilling of the pond in the long term, will not increase flood risk upon the site or the surrounding land.

- 2.3. On balance, therefore, it is recommended that permission be granted subject to the following conditions.

3. CONDITIONS / INFORMATIVES

- 1 The development hereby permitted shall be begun before the expiration of five years from the date of this permission.
Reason: To accord with the provisions 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 Prior to the commencement of any works on site (including demolition and site clearance) a Tree Protection Plan (TPP) to BS5837:2012 shall be submitted to and approved in writing by the Local Planning Authority. The TPP shall detail the methods of tree/hedge protection and clearly detail the positioning and specifications for the erection of tree protective fencing. The development shall be implemented strictly in accordance with the details so approved.
Reason: In the interests of local amenity in accordance with Local Plan Policies GE5 and GE6 relating to the retention, protection and replacement of trees.
- 3 Where construction/infill traffic does need access within the Root Protection Zone of retained trees details of suitable ground protection measures to avoid damage to roots shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any works on site and the ground protection measures so approved shall remain in place until the completion of the infill of the pond hereby approved as part of the landscaping.
Reason: In the interests of local amenity, in accordance with Local Plan Policies GE5 and GE6 relating to the retention, protection and replacement of trees.
- 4 The 'inert clay and soil backfill' referred to in the submitted Design and Access statement accompanying the application to be used as the infill soil shall be of a standard to comply with British Standard for soil 3882 (2007) so as to ensure that it is capable of supporting new roots of the suggested planting as well as ensuring that pollutants/toxins etc will not leech out into the local environment (or pond)
Reason: To safeguard the retained/protected tree(s) in accordance with Local Plan Policies GE5 and GE6 relating to the retention, protection and replacement of trees and help promote new planting and avoid possible pollution.

INFORMATIVES

- 1 In accordance with the requirements of The Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 and the provisions of the NPPF, the Local Planning Authority adopts a positive and proactive approach to dealing with planning applications and where possible, will seek solutions to any problems that arise when dealing with a planning application with the aim of fostering the delivery of sustainable development.

At the heart of this positive and proactive approach is the authority's pre-application advice service for all types of development. Further to this however, the authority publishes guidance on the Council's website on how to submit planning applications and provides full and up-to-date information in relation to planning applications to enable the applicant, and other interested parties, to track progress.

In this instance, having had regard to all material considerations, the application constitutes sustainable development and has therefore been approved in a timely manner.