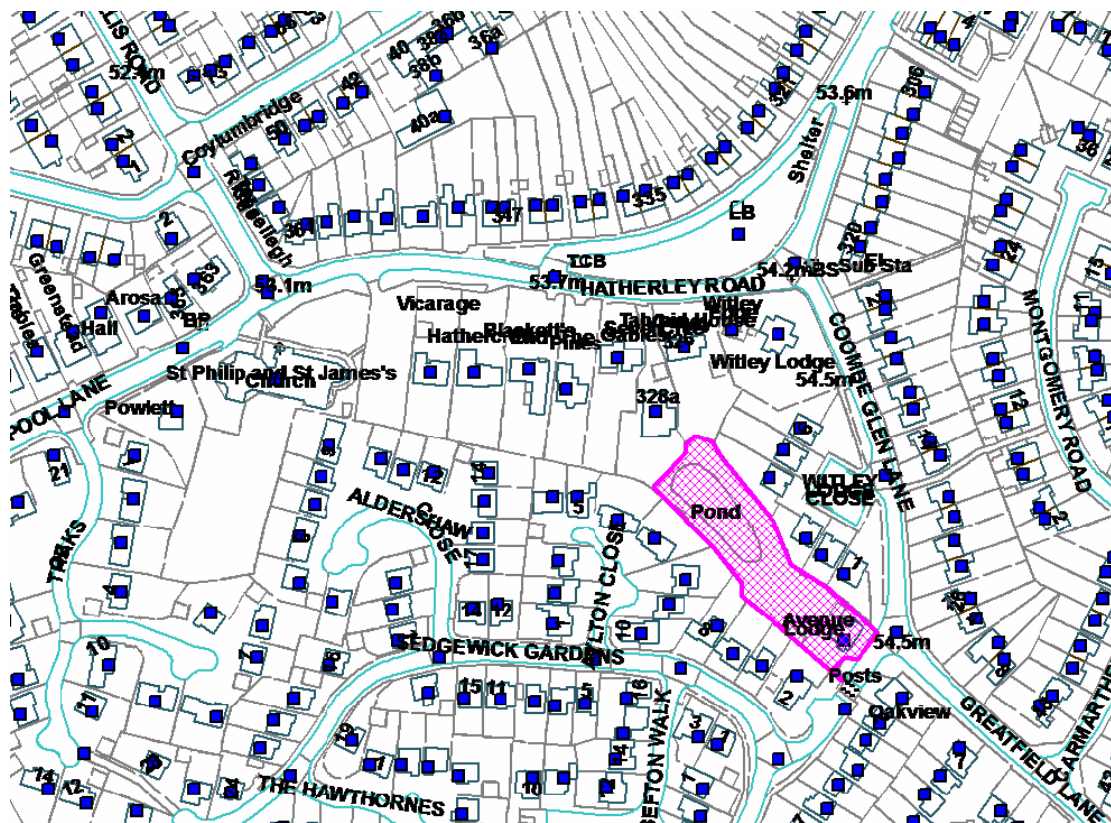


<b>APPLICATION NO:</b> 14/00505/FUL		<b>OFFICER:</b> Mr Ian Crohill
<b>DATE REGISTERED:</b> 22nd March 2014		<b>DATE OF EXPIRY:</b> 17th May 2014
<b>WARD:</b> Up Hatherley		<b>PARISH:</b> Up Hatherley
<b>APPLICANT:</b>	Mr Jeremy Limbrick	
<b>AGENT:</b>	n/a	
<b>LOCATION:</b>	Avenue Lodge, Chargrove Lane,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

**RECOMMENDATION:** Permit



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## 1. DESCRIPTION OF SITE AND PROPOSAL

- 1.1 The application simply relates to the landscaping of part of the garden to the rear of Avenue Lodge. The application site has been the subject of several applications in the recent past (see planning history below) most of which have related to either the trees surrounding the pond located in this part of the garden or the pond itself.
- 1.2 The landscaping involves filling in of part of the pond and it is this element that requires planning permission, as an engineering operation. Normally landscaping of a private garden would not in itself require planning permission and even limited earth moving or remodelling would also not require the benefit of specific planning permission. It is a question of scale and degree and in this instance it is considered that the amount of infilling proposed is such that it is considered that planning permission is required.
- 1.3 The proposal entails the importing of inert clay and soil and extensive planting including, according to the submitted Design and Access Statement in excess of 50 new trees.
- 1.4 The application was the subject of a report to Planning Committee in May having been brought to Committee for consideration following a request from Councillor Whyborn and the objection of the Parish Council. At the meeting in May, Members, after a lengthy debate, deferred consideration of the application with a request that the applicant commission a hydrologist's report to assist with Members' understanding of the application.
- 1.5 That report was received on 29<sup>th</sup> July and local residents and the Parish Council were notified of its receipt and invited to comment. The report is attached in full as an appendix to this report.
- 1.6 This report is basically the same as that presented to Committee in May with additional commentary added relating to the hydrology report and further representations received.

## 2. CONSTRAINTS AND RELEVANT PLANNING HISTORY

**Constraints: None**

**Relevant Planning History:**

**05/00725/FUL 24th October 2005 WDN**  
Erection of 2 no. dwellings

**05/01150/CONF 15th September 2005 CONFIR**  
Confirmation of Tree Preservation Order number TPO618: all trees of whatever species within the area shown as A1 on the accompanying plan

**05/01491/TPO 14th November 2005 SPLIT**  
Various tree works in accordance with recommendations made in arboricultural report by Mr B J Unwin dated August 2005, including: 1. re-pollarding willows 2. reduction in height to ash 3. fell suppressed trees (mainly ash) 4. (this item does not require consent) remove dead wood, dead and dangerous trees. 5. fell oak tree by pond (tree numbered 50 in Mr Unwins report)

**05/01514/TPO 21st November 2005 PER**  
Remove all branches overhanging 4 Witley Lodge Close

**06/01291/FUL 18th October 2006 WDN**  
Erection of 2 no. dwellings

**07/00040/CLPUD 30th March 2007 REF**

Filling in of pond within domestic curtilage

**08/00037/FUL 6th May 2009 REF**

Erection of single storey flat roof, 4 bedroom detached dwelling in rear garden of Avenue Lodge

**08/00592/TPO 22nd May 2008 PER**

Eucalyptus - cut back branches to boundary of 2 Sedgewick Gardens

**09/01740/FUL 2nd February 2010 REF**

Erection of single storey dwelling in rear garden of Avenue Lodge, Chargrove Lane

**11/01217/TPO 3rd October 2011 PER**

Trees along boundary with 3 Witley Lodge Close: cut back to boundary

**12/01486/FUL 4th February 2013 WDN**

Cutting back overhanging branches of Ash Tree, Damson and Sycamore trees to boundary  
Safety works around pond incorporating limited infilling along one side and re-landscaping

**13/01573/TPO 8th October 2013 PER**

1) Eucalyptus - Fell due to damage to boundary wall. 2) Ash - Fell due to damage to boundary wall.

### **3. POLICIES AND GUIDANCE**

#### Adopted Local Plan Policies

CP 1 Sustainable development

CP 3 Sustainable environment

CP 4 Safe and sustainable living

GE 2 Private green space

GE 5 Protection and replacement of trees

GE 6 Trees and development

GE 7 Accommodation and protection of natural features

NE 1 Habitats of legally protected species

UI 1 Development in flood zones

UI 2 Development and flooding

National Planning Policy Framework 2012

### **4. CONSULTATIONS**

#### **Parish Council**

*26th March 2014*

This appears to be yet another application to reduce this important historic balancing pond in size, to which we are implacably opposed for all the reasons given in our objections to the many previous proposals. We have no objection to sensitive landscaping but the pond must NOT be reduced in size! This is an area liable to flooding as all the neighbours will readily testify, with flooding even reaching the churchyard on occasions. We therefore respectfully request that you refuse any application to reduce the pond in size, shape or depth

**Parish Council** (following receipt of hydrology report)

*29th July 2014*

We do NOT support this application and request that a site visit be made as soon as possible. The applicant has tried several times to reduce the size of this iconic lake and we believe has acted independently in the past without authority. We are concerned that change by stealth has occurred and visual observations suggest it may again be taking place at the present time. We are opposed to any reduction in size of the lake which may be brought about under the term "landscaping".

**Land Drainage Officer**

*24th April 2014*

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.

I do not comment upon the possible historic or ecological interest of the site.

**Tree Officer**

*6th May 2014*

Theoretically tree roots cannot live within water and as such the infilling of the pond will not have an impact on the TPO protected trees within this garden. Similarly the application states that no trees are to be removed as a result of this proposed development. However it may be that damage could be incurred during the in-fill process and as such retained trees need to be protected during any operations. Therefore a Tree Protection Plan (to BS 5837 (2012)) needs to be submitted and agreed.

Where construction/infill traffic does need access within the Root Protection Zone, suitable ground protection measures need to be submitted and agreed to this council so as to avoid damage to roots.

The Design & Access Statement states that 'inert clay + soil backfill' is to be used as the infill. It is important that such soil used is to the British Standard for soil 3882 (2007) so as to ensure it is capable of supporting new roots of suggested plantings as well as ensuring that pollutants/toxins etc will not leech out into the local environment (or pond). It is anticipated that such infilling if undertaken with care will provide a new rooting environment for existing trees.

Regarding the proposed landscaping of the garden, providing that no protected trees are to be removed or are to be pruned, the Tree Section does not object and indeed such planting details could be beyond the remit of this council to control.

**Gloucestershire Centre For Environmental Records**

*2nd April 2014*

Report can be viewed on line.

## 5. PUBLICITY AND REPRESENTATIONS

Number of letters sent	27
Total comments received	9
Number of objections	7
Number of supporting	2
General comment	0

### 5.1 Comments Received

Copies of representations are attached to this report.

## 6. OFFICER COMMENTS

### 6.1 Determining Issues

**6.1.1** 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 the 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.

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

### 6.2 Impact on neighbouring property

**6.2.1** 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.

**6.2.2** 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.

**6.2.3** 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.

**6.2.4** 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.

### **6.3 Possible Flooding Issues**

**6.3.1** 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.

**6.3.2** 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"*.

**6.3.3** 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"*.

**6.3.4** 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."*

**6.3.5** 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.....”*

**6.3.6** Professional advice received before the Committee meeting in May was clear that the pond plays little or no flood storage capacity role and its infilling would not exacerbate any existing flooding issues which are in fact unrelated to the pond.

**6.3.7** However, as has already been stated no decision in respect of the application was taken at the May committee meeting and Members requested the applicant to commission an independent hydrology report in order to help understand the divergent claims linking the existence of the pond and recent incidents of flooding.

**6.3.8** The report prepared by Waterco Consultants was received on 29<sup>th</sup> July 2014. The consultant company comment that “a qualitative approach has been adopted for this report which examines water flows in theory, constrained by hydrological science, to suggest the most probable effect of part-filling of Avenue Lodge pond”.

**6.3.9** **The report is attached to this report. Members are urged to read the report in full as it does help to understand both the origins of the pond, the nature of the pond and in particular considerations relating to localised flooding. There follows a very brief summary of the report.**

**6.3.10** The report examines the origin of Avenue Lodge pond reviewing the various claims, comments and reports that have been received and concludes in respect of the origin of the pond that it is most likely an excavated pond where peat or even a suitable patch of gravel or higher quality clay was removed for local use.

**6.3.11** It is pointed out that no stream channels enter or exit the pond and rules out springs (groundwater issuing within the pond or nearby) as being a possible supply point(s) for the water in the pond for 6 reasons. In addition the report considers both winter and summer flooding scenarios and impact assessment is also reflected upon.

**6.3.12** The author of the report draws the following conclusions:

***“In conclusion, as to the origin of the Avenue Lodge pond, it was probably an excavated pond where peat or even a suitable patch of gravel or higher quality clay was removed for local use.***

***The water level in the pond is principally a reflection of the local water table and the operation of infilling half the existing pond area with clay will therefore have an insignificant effect in relation to groundwater flooding at the surrounding properties, including the most affected property, Brambles.***

***However, some increased risk of surface water flood frequency could result from the loss of pond area and it is recommended that a scheme of compensatory storage be designed and implemented to mitigate this risk. The compensatory storage volume would be around 80 m<sup>3</sup>.***

***The mitigation measures could take the form of underground storage, as suggested in support of previous planning applications for the site. Another option is to design the landscaping such that there is a lower lying area, with appropriate planting, which would flood temporarily during an extreme rainfall event and then soak away, without damage.”***

## **7. CONCLUSION AND RECOMMENDATION**

- 7.1** 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 directly enjoyed by only a small number of individuals. The site has no significance from the broader public perspective. There is no question that the area provides for ‘a relatively undisturbed environment for a variety of wildlife’, however, it must be borne in mind that the proposal is not to completely remove the pond but to reduce its size and re-landscape it as part of the applicant’s private garden amenity space. It should still support a variety of wildlife albeit possibly of a different type.
- 7.2** Professional advice expressed by both the Council’s Drainage Engineer and informally by the Environment Agency indicated that despite what is alleged by local residents, the infilling of the pond in the long term, would not increase flood risk upon the site or the surrounding land. This view is supported in the conclusions to the hydrology report submitted at Members’ request; “the operation of infilling half the existing pond area with clay will therefore have an insignificant effect in relation to groundwater flooding at the surrounding properties, including the most affected property, Brambles”.
- 7.3** The hydrologist does, however, highlight the fact that there may be some increased risk of water flood frequency arising from a reduction in the size of the pond. He recommends that compensatory storage volume of around 80m<sup>3</sup> should be provided. It is considered that this requirement could be secured by way of condition.
- 7.4** It is recommended therefore that permission be granted subject to the following conditions.

## **8. 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 The development hereby permitted shall be carried out in accordance with drawing numbers 505.01 Location plan; 505.02 Site sections and Garden Visuals received 21 March 2014.  
Reason: To ensure the development is carried out in strict accordance with the approved drawings.
- 3 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.
- 4 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.
- 5 The 'inert clay + 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.
- 6 No work on site shall commence until such time as details of a scheme for compensatory storage of water during times of extreme rainfall has been submitted to and approved by the Local Planning Authority. The scheme shall provide for compensatory storage volume of around 80m<sup>3</sup> and shall be designed to take the form of underground storage or the creation of a depression in the landscape (with appropriate planting) either of which would flood temporarily and then soak away. The measures approved in compliance with this condition shall be implemented in full and otherwise be available for use before any work in compliance with this planning permission is commenced.  
Reason: Reason: To ensure the development does not result in an increased risk of surface water flooding.

## **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.