

Planning Application no 16/01240/OUTMAJ - Floating Homes and other housing at Burghfield Sailing Club site, Theale Gravel Pits

Further Response from the Berkshire Ornithological Club to Further Submissions by Applicant (October 2016)

This note summarises our consultation response and deals with some issues raised by the latest submissions from the applicant.

General Statement of our Objection

We remain opposed to the application, for the planning policy reasons stated before. The council's adopted policy CS17, which clearly states that any development that may harm an LWS (which this site is) will only be permitted if there are no reasonable alternatives and there are clear demonstrable social or economic benefits of regional or national importance that outweigh the need to safeguard the site. There are clearly reasonable alternatives to this site for housing in West Berkshire. This site was rejected at the first stage of the council's site selection process, and there is no pressing need to sacrifice, harm or impinge upon a designated wildlife site for national or regional need. We deal below with the second element of the policy, applicable had these fundamental tests been satisfied, namely the adequacy of mitigation. Our view is that this second element has not been satisfied, but in any event that the application fails the first part of the test in the policy.

We hope, in the light of the recent Court of Appeal decision in *R (ex parte Lensbury) - v- Richmond-upon-Thames*, which highlighted the importance of planning authorities properly considering and applying adopted policy relevant to an application, that this fundamental policy objection will be highlighted in the report to the committee, and that the committee will decide this application in accordance with its adopted policy, which policy is consistent with the provisions of paras 109 to 118 of the NPPF.

Responses to Latest Submissions.

We are disappointed to see that the applicants are still putting forward the information based on surveys whose shortcomings we have set out in our previous submission, in opposition to detailed and careful surveys carried out by observers familiar with the site and key species (notably Nightingales), and the national expertise of the RSPB.

Dealing firstly with the assessment of the site as of "District" importance, since our last submission a further resource with information from the national 2007-2012 BTO Bird Atlas has been published on-line, namely the Thames and Chilterns Bird Atlas (thamesandchilternbirdatlas.org.uk), which combines the results from tetrad (2kmx2km) surveys undertaken in five counties in the region, Bedfordshire, Berkshire, Buckinghamshire, Hertfordshire and Oxfordshire. We have previously mentioned that the tetrads in which the site fall lie in the top 10 for number of species recorded in Berkshire. At this regional level they fall into the top 32 out of over 2300 tetrads - the top 1.5% in this region.

Dealing with comments made in response to the Theale Area Bird Conservation Group's representations, and in particular the information not found in TVERC data, the council should be aware that due to resource constraints TVERC has not yet been able to enter data from local clubs and organisations beyond that for 2012. The consultants have not consulted this club as holders of the local records database which is constantly updated to obtain better information, nor have they consulted the comprehensive county avifauna (a complete account of Berkshire's birds, including the results of the atlas surveys previously referred to) which not only included records up to late 2013, but also analysis which might have been helpful to give a proper and balanced view of the value of this site. This is a well-known and well-studied site, and it reflects poorly on the applicant that incomplete data, and surveys whose shortcomings we have highlighted are still being asserted to diminish its status.

While it is noted that some note has been taken of our concerns regarding the impact of the scheme by now proposing that steps be taken to further limit access to the southern side of the lake, we still consider that the mitigation measures are inadequate, even if the primary policy objection did not apply. Nothing has been proposed to deal with the impact of disturbance on the area along the northern shore, close to the proposed new housing. Indeed, the applicants admit in their response at paragraph 4.3.7.3 that they are not able to create replacement scrub habitat, thereby acknowledging that they cannot adequately mitigate the impact of the development, and no off-site enhancements are offered to compensate.

Should mitigation be appropriate, it should not be left to reserved matters approvals or the discharge of conditions. It is of sufficient importance that the details should be settled and secured by an agreement under section 106 of the Town and Country Planning Act 1990 before any permission is granted. We would also draw the council's attention that a recent check of the title to the site reveals that the applicant developer has no interest in the site registered at the Land Registry, and therefore it is unclear how they could enter into such an agreement which has to be entered into by the owner.

Conclusion

We maintain our objection to this scheme, and hope that the council will apply its policy protecting its Local Wildlife Sites by refusing permission.

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