

**ROYAL BOROUGH OF WINDSOR & MAIDENHEAD
PLANNING COMMITTEE**

DEVELOPMENT CONTROL PANEL

17 February 2021

Item: 4

Application No.:	20/02720/FULL
Location:	Reservoir Ascot Racecourse Winkfield Road Ascot To Pumping Station West of The Great Pond Watersplash Lane Ascot
Proposal:	Installation of replacement underground water pipeline, replacement plant to pump house and associated works connecting from Ascot Racecourse Reservoir; across Winkfield Road (A330); Royal Ascot Golf Club; Lower Farm; and to the Great Pond.
Applicant:	
Agent:	Mr Wai-kit Cheung
Parish/Ward:	Sunninghill And Ascot Parish/Ascot & Sunninghill
If you have a question about this report, please contact: Susan Sharman on 01628 685320 or at susan.sharman@rbwm.gov.uk	

1. SUMMARY

The proposal is for development that is not inappropriate in the Green Belt and would not adversely affect any trees. However, the site is located in an area known to host Great Crested Newts (GCN) and, due to insufficient information, it has not been satisfactorily demonstrated that the proposal would not adversely impact GCN, which are a protected species.

It is recommended the Panel refuses planning permission for the following summarised reason (the full reason is identified in Section 13 of this report):

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| 1. | Insufficient information has been provided regarding the impacts of the proposals on Great Crested Newts, which are a protected species and a material consideration in the planning process. Accordingly, the proposal is contrary to paragraph 175 of the National Planning Policy Framework 2019 and adopted Policy NP/EN4 of the Ascot, Sunninghill & Sunningdale Neighbourhood Plan, 2014. |
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2. REASON FOR PANEL DETERMINATION

- The Council's Constitution does not give the Head of Planning delegated powers to determine the application in the way recommended; such decisions can only be made by the Panel.

3. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

- 3.1 The application site is approximately 1.29 hectares and encompasses land within Ascot Racecourse, Winkfield Road, Royal Ascot Golf Club, Lower Farm public footpath SUNH/4/2 and the wooded area by the Great Pond. The site includes the area of the new water pipeline as well as the construction access route from a construction compound located south of the Royal Ascot Golf Club to the east-west main pipeline alignment.

4. KEY CONSTRAINTS

- 4.1 The application site is within the Green Belt. The areas around Brewer's Pond and the Great Pond are also designated Wildlife Heritage Sites.

5. DESCRIPTION OF THE PROPOSAL AND ANY RELEVANT PLANNING HISTORY

- 5.1 The proposal is for the installation of a replacement underground water pipeline, replacement plant to pump house and associated works. The replacement pipeline is approximately 1.26km long and will connect from Ascot Racecourse Reservoir, across Winkfield Road (the A330), Royal Ascot Golf Club, Lower Farm and to the Great Pond at Ascot.
- 5.2 The purpose of the new 125mm diameter pipeline, (which will be installed by a combination of horizontal directional drilling and open trenching and take approximately 9 weeks to install), is to replace an existing and aged pipeline that follows a similar route. The existing pipeline carries water abstracted from the Great Pond, (via the existing pump house utilising the Racecourse's existing abstraction rights), to the reservoir within the Racecourse, where it is stored and used for irrigation needs. However, as the existing pipeline is aged and leaking, particularly the section along the golf course, there is a need to decommission the existing pipeline, (which will be disconnected and remain in-situ) and replace this with the laying of the new pipeline. This will provide a more efficient and effective channelling of water from the Great Pond to the Racecourse and minimise unnecessary water wastage.
- 5.3 The proposed pipeline would be installed using two methods. Horizontal Directional Drilling (HDD) from the Ascot Racecourse Reservoir, beneath the A330 to the western edge of Royal Ascot Gold Club and for a distance of approximately 95m. The minimum depth of the HDD is approximately 1.2m and the maximum is circa 2.8m. This method of installation is a minimal impact trenchless method of installing underground pipes. Due to the high cost of HDD, only a short section of the new pipeline will be installed using this method to address the need to avoid underground utilities beneath the A330, as well as minimising impact to this highway.
- 5.4 The majority of the new pipeline, (at a length of approximately 1,165km), will be installed using ground excavation, open trenching, pipe-laying and associated reinstatement methods. This is the traditional 'cut and cover' pipeline installation method, whereby a trench is dug by a 14-tonne excavator, pipeline laid and then the trench back-filled and top-soil added. For this proposal, the width of the trench is to be up to 0.45m wide and with a typical trenching depth of approximately 1.2m. The proposal requires a working area either side of the trench at 3.5m, so that the total width of the pipeline installation working area will be up to 7.45m
- 5.5 Plant within the pump house, (located in a small timber structure in close proximity to the Great Pond) is to be replaced as part of the proposed development to enable water extraction. The replacement plant will be similar to the existing and will be contained within the existing pump house.
- 5.6 There is no planning history relevant to the consideration of the proposal.

6. DEVELOPMENT PLAN

Adopted Royal Borough Local Plan (2003)

- 6.1 The main Development Plan policies applying to the site are:

Issue	Adopted Local Plan Policy
Green Belt	GB1, GB2 (A)
Local character	N1
Trees	N6, DG1
Recreation	R8

These policies can be found at <https://www.rbwm.gov.uk/home/planning/planning-policy/adopted-local-plan>

Adopted Ascot Sunninghill and Sunningdale Neighbourhood Plan (2011-2026)

Issue	Neighbourhood Plan Policy
Environmental (inc Trees and Biodiversity)	EN2, EN4

These policies can be found at <https://www.rbwm.gov.uk/home/planning/planning-policy>

7. **MATERIAL PLANNING CONSIDERATIONS**

National Planning Policy Framework Sections (NPPF) (2019)

Section 4- Decision-making

Section 8- Promoting healthy and safe communities

Section 13- Protecting Green Belt land

Section 15- Conserving and enhancing the natural environment

Borough Local Plan: Submission Version

Issue	Local Plan Policy
Rural Development	SP5
Nature Conservation & Biodiversity	NR3
Trees	NR2

Borough Local Plan: Submission Version Proposed Changes (2019)

Issue	Local Plan Policy
Rural Development	QP5
Nature Conservation & Biodiversity	NR2
Trees	NR3

- 7.1 The NPPF sets out that decision-makers may give weight to relevant policies in emerging plans according to their stage of preparation. The Borough Local Plan Submission Document was published in June 2017. Public consultation ran from 30 June to 27 September 2017. Following this process the Council prepared a report summarising the issues raised in the representations and setting out its response to them. This report, together with all the representations received during the representation period, the plan and its supporting documents was submitted to the Secretary of State for independent examination in January 2018. The Submission Version of the Borough Local Plan does not form part of the statutory development plan for the Borough.
- 7.2 In December 2018, the examination process was paused to enable the Council to undertake additional work to address soundness issues raised by the Inspector. Following completion of that work, in October 2019 the Council approved a series of Proposed Changes to the BLPSV. Public consultation ran from 1 November to 15 December 2019. All representations received have been reviewed by the Council and the Proposed Changes have been submitted to the Inspector. The Examination of the BLPSV has now resumed and hearings were held at the end of 2020. The BLPSV and the BLPSV together with the Proposed Changes are therefore material considerations for decision-making. However, given the above both should be given limited weight.
- 7.3 These documents can be found at:
<https://www.rbwm.gov.uk/home/planning/planning-policy/emerging-plans-and-policies>

Other Local Strategies or Publications

- 7.3 Other Strategies or publications material to the proposal are:

- RBWM Landscape Assessment

More information on these documents can be found at:

<https://www.rbwm.gov.uk/home/planning/planning-policy/planning-guidance>

8. CONSULTATIONS CARRIED OUT

Comments from interested parties

6 occupiers were notified directly of the application.

The planning officer posted notices advertising the application at the site on 6th November 2020 and the application was advertised in the Local Press on 29th October 2020.

No letters of representation have been received.

Consultee responses, summarised:

Consultee	Comment	Where in the report this is considered
Parish Council	No objections. Replacement pipe is needed. The Arboricultural Development Report is robust. There is a loss of 2 trees but the stumps will be retained for diversity to wooded pond-edge.	9.4
Tree Officer	No objections subject to conditions in regard to tree protection and tree retention/replacement in accordance with submitted arboricultural report.	9.4 – 9.5
Berkshire Archaeology	No objections subject to a condition to undertake the works in accordance with the approved mitigation scheme.	9.22 – 9.24
Lead Local Flood Authority	No objections.	Noted.
Environment Agency	No comments.	Noted.
Highway Authority	No objections. The proposal raises no highway concerns.	Noted.
Ecology	Further surveys for reptiles and breeding birds are not required subject to a condition that the works are undertaken in accordance with a Construction Environmental Management Plan Further surveys in relation to Great Crested Newts (GCN) are required as it is likely that a licence for development works affecting GCN would need to be obtained from Natural England. There are GCN at Brewers Pond and the pipeline route would fall within 250m of this habitat. Recommend refusal on the grounds of insufficient information regarding the impacts of the proposal on GCN.	9.6 – 9.21

9. EXPLANATION OF RECOMMENDATION

9.1 The key issues for consideration are:

- i Green Belt
- ii Trees
- iii Ecology, and
- iv Other material considerations

Green Belt

- 9.2 Paragraph 146 of the NPPF states that certain forms of development, (in addition to certain new buildings referred to in paragraph 145 of the NPPF), are not inappropriate in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land within it. These include engineering operations.
- 9.3 The laying of the proposed new pipeline, as set out in Section 5 above, is an engineering operation, which when installed will have no impact on the openness of the Green Belt, nor conflict with the purposes of including the land within it. Accordingly, the proposal is not inappropriate development in the Green Belt and the principle of development is acceptable.

Trees

- 9.4 The Council's Tree Officer has advised that the alignment of the proposed pipeline has been adjusted to avoid the Root Protection Areas (RPA) of trees as far as possible. Where the route encroaches within the RPA of retained trees, the potential adverse impacts have been minimised through the installation methodology. Only one tree, an Alder, is to be removed, a further laurel, considered a scrub, is also to be lost.
- 9.5 The Tree Officer has advised that there are no objections to the proposal subject to adherence to the submitted 'tree:fabrik Arboricultural Development Report, 'Ascot Racecourse Water Pipeline Project' dated October 2020, in full, together with conditions relating to tree protection and retention/replacement of retained trees.

Ecology

- 9.6 With regards to reptiles and nesting birds, although no further information has been provided on exactly where reptiles would be moved to, or whether there are likely to be nesting birds within marginal aquatic vegetation around the Great Pond, given the relatively small extent of the proposals on habitats (3 metres each side of the 45 cm trench) and the surrounding habitats as depicted on the phase 1 habitat maps, it seems likely that the proposed mitigation measures (which it is recommended would be secured via a planning condition for implementation of an approved Construction Environmental Management Plan (CEMP) for biodiversity) would be adequate to protect these species during works, and that enough suitable nearby habitat is available for their temporary dispersal. Further surveys for these species would therefore not be required in this case.
- 9.8 However, with regards to GCN, further survey work is still be needed, as it seems likely that a licence for development works affecting GCN would need to be obtained from Natural England before works could lawfully proceed.
- 9.9 Brewers Pond has been found to host GCN and it is surrounded by woodland and grassland which provide highly suitable terrestrial habitat for GCN. Currently the population size and status remains unknown, but it seems likely that there is a breeding population as a juvenile was observed on the golf course. Whilst GCN are largely active at night, it is not unknown for them to be active during the day also (and presumably it was day time when staff photographed the two individuals on the golf course). Dispersal routes to and from the pond, and whether these would be obstructed by the new pipeline during works, also currently remains unknown. Furthermore, section 5.8.2 of the GCN Mitigation Guidelines (the accepted industry standard) states:
- “there is ample evidence that newts often disperse a considerable distance from ponds, so it is for the surveyor to assess likely habitat use based on the available information. Even habitats which do not provide much food or cover, such as playing fields or car parks, may be traversed, so loss of these habitats may have impacts on dispersal. As a general guide, suitable habitats within 250m of a breeding pond are likely to be used most frequently.”
- 9.10 The pipeline route would fall within 250m of Brewer's Pond. The ecology report provided with this application states that a potential impact of the works is the

“Killing and/or injuring reptiles and great crested newt (GCN) that could be present in areas of dense and rank vegetation along the route”

9.11 It also seems highly likely that works would cause disturbance to GCN and potentially obstruct their dispersal routes to and from the pond and to resting places. In England it is illegal to:

- Intentionally or deliberately capture or kill, or intentionally injure great crested newts
- Deliberately disturb great crested newts or intentionally or recklessly* disturb them in a place used for shelter or protection
- Damage or destroy a breeding site or resting place
- Intentionally or recklessly damage, destroy or obstruct access to a place used for shelter or protection

The government’s (and Natural England’s) advice on mitigation licences states:

“You must apply for a mitigation licence if your work will have impacts on great crested newts (GCN) that would otherwise be illegal, such as:

- capturing, killing, disturbing or injuring them (on purpose or by not taking enough care)
- damaging or destroying their breeding or resting places (even accidentally)
- obstructing access to their resting or sheltering places (on purpose or by not taking enough care)”

9.12 Furthermore, Natural England’s Standing Advice for GCN states:

“developers should submit qualitative and quantitative information with their planning application on how their development avoids or mitigates for harm on GCN.

If there’s likely to be a negative effect on GCN, you should consider these factors to assess the site’s importance:

- the number and size of GCN population
- the nature of the population - for example, if the site includes a breeding area or is connected to other important populations
- how important the site is to the local and national GCN population, for example how near it is to a site of special scientific interest (SSSI) where GCN is a listed species”

9.13 In this case, this information has not been provided. Furthermore, the GCN Mitigation Guidelines state:

“A licence simply permits an action that is otherwise unlawful. A licence should be applied for if, on the basis of survey information and specialist knowledge, it is considered that the proposed activity is reasonably likely to result in an offence”

And:

“The developer and their advisor(s) share the responsibility for the following:

- Ensuring that they provide to Local Planning Authorities an accurate assessment of application sites, including surveys for great crested newts if their presence is suspected
- Applying for a licence to DEFRA **should mitigation be required”**

9.14 It therefore seems likely that in this case, where impacts to GCN are predicted (albeit low) a mitigation licence will be required which will need to be informed by further survey work. It should be noted that the Mitigation Guidelines actually use a scenario of temporary disturbance and destruction followed by replacement of habitat during installation of a pipeline as one of their examples of where mitigation, and therefore a mitigation licence, are required.

9.15 The Local Planning Authority has statutory obligations under the Habitat Regulations. This means that the Local Planning Authority needs to be satisfied that the proposals are likely to

meet the three tests of the Habitat Regulations (see below) and that a licence is not unlikely to be obtained from Natural England before they can issue planning permission.

9.16 A licence for development works affecting GCN (i.e. for derogation from the provisions of the Habitat Regulations) will likely need to be obtained before works which could impact upon GCN can commence. This involves submitting a licence application to Natural England with a detailed mitigation plan informed by surveys undertaken in accordance with national guidelines. In order to obtain such a licence, the SNCO must apply the requirements of the Regulations and, in particular, the three tests set out in sub-paragraphs 53(2)(e), (9)(a) and (9)(b). These are as follows:

(1) Regulation 53(2)(e) states that a licence can be granted for the purposes of “preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment”.

(2) Regulation 53(9)(a) states that the appropriate authority (the SNCO) shall not grant a licence unless they are satisfied “that there is no satisfactory alternative”.

(3) Regulation 53(9)(b) states that the appropriate authority (the SNCO) shall not grant a licence unless they are satisfied “that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.”

9.17 Furthermore, paragraph 99 of the government Circular 06/05: Biodiversity and Geological Conservation - Statutory Obligations and Their Impact within the Planning System (this document has not been revoked by the National Planning Policy Framework) states that:

“It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted.”

9.18 In this case, since 1) the extent to which GCN (which are a protected species) may be affected by the proposals has not been established, and 2) there appear to be no “exceptional circumstances”, the application would not be in accordance with the above planning policy. Furthermore, without understanding the size or status of the GCN population, or the extent to which it may be affected, it cannot be demonstrated that sufficient mitigation can be provided to ensure GCN are not harmed by the proposals and to maintain the favourable conservation status of GCN (and therefore it cannot be certain that a licence would be granted).

9.19 Further GCN surveys would therefore need to be undertaken to establish the size and status of the GCN population to be affected, the extent to which it could be affected, and to inform the GCN licence application. The results of the surveys (along with any mitigation) would need to be provided prior to the application being determined or the application would need to be refused on the grounds that insufficient information has been provided regarding the impacts of the proposals on GCN, which are a protected species and a material consideration in the planning process.

9.20 In response to the applicant has set out the following points:

- *The duration of the works is estimated to be 9 weeks only; of which 1 week for the Horizontal Directional Drilling (from Ascot Racecourse Reservoir to western edge of Golf Club); and 8 weeks for the remainder to the Great Pond via a 0.45m wide trench by 1.2m deep. The trench works is considered low impact to the landscape, which is predominantly within an active Golf Course that is already subject to regular landscape maintenance (such as grass cutting by tractors of similar size to what we are proposing to use for the works).*
- *As stated in the Construction Method Statement, all excavations will be backfilled before the end of each day with the exception of a 1m stretch at the furthest extent of that day's progress - this is*

so that works can continue from this point the following day. To prevent any risk to wildlife, this open excavation will be completely covered with boards securely weighted down to ensure there can be no ingress of wildlife to the excavation – thus minimising Great Crested Newts (GCN) for example from being trapped during the night.

- A team of professional ecologists with extensive experience of GCN survey and mitigation planning/implementation have assessed the potential impacts of the development on GCN and have verified that the proposed construction operations are highly unlikely to result in significant adverse impacts on GCN provided that construction operations are undertaken in a manner that is sensitive to the ecology of GCN;
- The potential development impacts on GCN are small-scale and temporary and can be adequately mitigated by adapting construction working practice to ensure negligible levels of risk to GCN;
- The project engineers have confirmed that the recommended mitigation approach (set out previously in a supplementary ecology report) is feasible to implement and could be made a condition of planning;
- In summary, implementation of the recommended mitigation strategy would result in no significant residual adverse risks to GCN and it would therefore not be proportionate or reasonable for the work to be implemented under the auspices of a Natural England development licence for GCN.
- Monitoring of GCN populations post development to confirm the continued presence of GCN within the Site could also be made a condition of planning.

9.21 In this case, having regard to the Local Planning Authority's statutory duties under the Habitat Regulations, it is recommended that the application be refused permission on the grounds of insufficient information regarding the impact of the proposal on Great Crested Newts. The proposal is contrary to paragraph 175 of the National Planning Policy Framework 2019 and adopted Policy NP/EN4 of the Ascot, Sunninghill & Sunningdale Neighbourhood Plan, 2014.

Other Material Considerations

9.22 Archaeology

The development proposals were submitted alongside an archaeological desk-based assessment, which found that there are potential archaeological implications associated with the proposed scheme.

9.23 The assessment found that there is potential for the proposals to impact deposits related to the construction and maintenance of a medieval dam, and that the site also has moderate potential to contain additional medieval and post-medieval archaeological features. Therefore, the application site falls within an area of archaeological significance and archaeological remains may be damaged by ground disturbance for the proposed development.

9.24 The applicant has submitted a scheme of archaeological mitigation in the form of an archaeological watching brief which the Council's Archaeologist has advised is satisfactory. Accordingly, should permission be granted a condition should be imposed that the works are undertaken in accordance with the submitted watching brief.

10. COMMUNITY INFRASTRUCTURE LEVY (CIL)

10.1 The development is not CIL liable.

11. CONCLUSION

11.1 The proposal is for development that is not inappropriate in the Green Belt and would not adversely affect any trees. However, the site is located in an area known to host Great Crested

Newts (GCN) and, due to insufficient information, it has not been satisfactorily demonstrated that the proposal would not adversely impact GCN, which are a protected species. Accordingly, the proposal is contrary to paragraph 175 of the National Planning Policy Framework 2019 and adopted Policy NP/EN4 of the Ascot, Sunninghill & Sunningdale Neighbourhood Plan, 2014.

12. APPENDICES TO THIS REPORT

- Appendix A - Site layout and location plan

13. REASONS RECOMMENDED FOR REFUSAL IF PERMISSION IS NOT GRANTED

- 1 Due to insufficient information it has not been demonstrated to the satisfaction of the Local Planning Authority that the proposal would not harm Great Crested Newts, which are known to be located in the vicinity of the application site and which are a protected species. Accordingly, the proposal is contrary to paragraph 175 of the National Planning Policy Framework 2019 and adopted Policy NP/EN4 of the Ascot, Sunninghill & Sunningdale Neighbourhood Plan, 2014.