

For: PLANNING AND REGULATION COMMITTEE – 2 July 2018

By: DIRECTOR FOR PLANNING AND PLACE

Development Proposed:

Section 73 application to vary conditions 1 and 13 of planning permission P15/V2384/CM (MW.0134/15) to allow for bunds to be retained on the site and to incorporate them into a revised restoration scheme

Division Affected: Faringdon

Contact Officer: Kevin Broughton **Tel:** 01865 815272

Location: Wicklesham Quarry, Sandshill, Faringdon, Oxon, SN7 7PQ.

Applicant: Grundon Sand & Gravel Ltd.

Application No: MW.0084/17 **District Ref:** P17/V2812/CM
District Council Area: Vale of White Horse District Council

Date Received: 27 September 2017

Consultation Period: 12 October – 2 November 2017

Recommendation:

The report recommends that the applications be approved.

Contents:

- Part 1 – Facts and Background
- Part 2 – Other Viewpoints
- Part 3 – Relevant Planning Documents
- Part 4 – Analysis and Conclusions

• **Part 1 – Facts and Background**

Site and Setting (see site plan Annex 1)

1. Wicklesham Quarry is immediately south of the A420, approximately 1km (0.6 miles) south of Faringdon.
2. The site is within the area designated as the Great Western Community Forest.
3. The site is within and surrounded by open countryside, and is within the landscape character area of 'North Vale Corallian Ridge'. The specific landscape character type of the site and its immediate surrounding area is defined as Rolling Farmland.
4. The nearest properties to the site (the Gardens and Wicklesham Lodge Farm) are immediately adjacent to the quarry at its furthestmost south-east corner.
5. The entire site lies within the Wicklesham and Coxwell Pits Site of Special Scientific Interest (SSSI). This SSSI has been designated for its geological interest due to the geological exposures on its perimeter. A public footpath crosses the access road to the quarry. Public bridleways run along its southern boundary and link to further bridleways to the south and east.
6. Two ponds created by the quarry support a small Great Crested Newt population.
7. The main vehicle access into the site is from a slip road immediately to the west of the junction of the A417 (Park Road) and the A420.
8. The quarrying activities have lowered the landform by some 8 metres over an area of approximately 8 hectares.

Planning History

9. Planning permission was granted in 1986 for the extraction of sand and gravel from the quarry.
10. Since then the County Council has granted several permissions for the site mainly to extend the time period to complete extraction of minerals and then restore the site but also for the importation of materials to be used in connection with construction of golf courses together with operations for the blending of imported and indigenous quarried materials. The current permission for the quarry (MW.0134/15) required the restoration of the quarry by 30 September 2016.

11. Mineral extraction has ceased and all buildings, machinery and hard standings have been removed. The site is required to be restored to agriculture.
12. The site was not restored within the timeframe, and the County Council served a breach of condition notice on 9 November 2016 requiring the site's restoration to be completed in accordance with the approved plans by 30 June 2017. Soil placement has taken place on the site, but not in accordance with the approved plans. The site failed to achieve a natural slope from the north-west to the south-east and instead was restored too flat in places, which led to some water logging issues in some areas and low water levels in the ponds. However, the two ponds on the site have been retained, and the SSSI conservation faces have been established.
13. The applicant sought to regularise the development by submitting the current planning application which was validated on 27 September 2017.
14. During the processing of the application, and following monitoring visits, it became clear that the proposed development would still not regularise the restoration on the site. Further discussions were held with the applicant and further information was sought. This additional information has led to the application now before the committee.

Details of the Development

15. The application seeks to vary conditions 1 and 13 of permission P15/V2384/CM (MW.0134/15). Condition 1 sets out the particulars, including the approved plans, and condition 13 states that 'No bunds of overburden, quarry waste or soil shall be left on the site after 30 September 2016.'
16. Some soils on the southern site perimeter have not been brought back to the quarry floor for use in restoration. The applicants have sought ecological advice which has stated that the removal of the bunds would disturb important ecological features, and should therefore be retained. The species likely to be affected are: badgers, sand martins and Great Crested Newts (GCN).
17. In determining the application and following site visits it became clear that the proposed changes would not address all the issues on the site and further information was submitted that included changes to the final restoration levels which would be achieved using the existing materials on the site.
18. The proposed changes would include the following works:-

- Re-contouring of ground levels using a cut and fill method cutting down to as much as 2.5m and filling by as much as 2m. The levels would all be on the quarry floor which is set down well below the surrounding levels;
- The shape of the ponds would reflect what is on the ground, and would be different in shape to the permitted plans, and the buffer zone around them would be smaller.
- Removal of newt fencing by hand;
- Erection of stock proof fencing to create and protect buffers around the ponds.
- Topsoils would be pushed into windrows and spread back onto the site. Where the subsoil and topsoil have become mixed this phase of the operations would not be carried out.
- The SSSI collection resources would need to be moved for a temporary period.
- A slight alteration to the location of the ditch running along the southern side of the site.

• **Part 2 – Other Viewpoints**

Representations

19. There are eight third party objections to the application. The points raised are set out below with the number of representations on that issue in brackets.
20. A new survey of the ponds should be carried out. (8)
21. OCC should be more vigilant in its defence of Wicklesham Quarry, and that significant damage has already been done to the ponds in contravention of planning conditions. (2)
22. The damage done to the ponds is a breach of the Conservation of Species and Habitats Regulation (2010). (1)
23. The County Council has a duty to commission a new survey of the ponds, to assess their current state, and to re-measure their depth. (1)
24. The applicant has a history of not following the requirements on the site, and an independent study is needed to check that work has been done satisfactorily. (1)
25. No alteration should be permitted until recommendations by Enzygo are made. (1)
26. The County Council has a legal duty under the NERC Act 2006 to ensure the protection of S41 Priority Habitat and Protected Species. (1)
27. Conditions 1 and 20 of the current permission have not been carried out for the following reasons:

- the applicant failed to apply for a licence from Natural England
- OCC's Monitoring Officer took photographs of Pond 1, which show that trees and vegetation which form an integral part of these habitats had been cut down and removed during this time.
- the damage to the pond demonstrated in these photographs is a breach of planning conditions cited above, results in loss of biodiversity, and threatens the ecology of the water bodies, including the European Protected Species that they support. It is also a breach of the Conservation of Species & Habitats Regulations 2010.
- OCC subsequently served a Breach of Conditions Notice. The damage shown above had already been carried out. (1)

Consultations

28. Vale of White Horse District Council (Planning) – no objection
29. Vale of White Horse District Council (EHO) – no objection
30. Faringdon Town Council – no objection
31. Environment Agency – no objection
32. Natural England – no comment
33. OCC (Highway Authority) – no objection
34. OCC (Lead Flood Authority) – no objection
35. OCC (County Ecology Team) – had no objection to the proposal. There was however a site meeting to examine alternatives to the proposed restoration, when it became clear that the site did not currently have the correct permitted contours, and that it would not be able to achieve them with the soils left on site, and made the following comments:
 - The drying of the ponds is not helped by poor land-forming, meaning that most of the site drains away from the ponds. The newt fence and soil mound may also deflect drainage away from ponds.
 - Reluctant to accept an altered restoration plan with less habitat, in terms of habitat quality or area. The current situation left as it is would present a loss of habitat from the expected area because the poor scrub / tall herb vegetation is not of a comparable quality with properly restored pond.
 - There needs to be open water on site to maintain the GCN population and to provide suitable conditions for breeding. Retrofitting a lining to either of the existing ponds would be difficult and likely to cause damage to any newts or other species present. Creating an additional pond would probably be the cheapest way of achieving open water.
 - The lack of buffer fencing also means that the area of habitat is smaller than expected.

- Tree planting to the south west of the entrance will fail due to prolonged waterlogging and should be replaced elsewhere.
- Currently water drains to the low point and pools there. The site owner's view is that this will eventually find its way out through bedrock. Given that the natural drainage of the site is in this direction, it would make sense to retain this as a (probably lined) pond and provide a small connecting habitat link to the existing pond area.

The following is recommended:

- Remove newt fencing under supervision of an ecologist and lower soil where this is deflecting water from pond areas.
- Control buddleia and replace with other scrub species.
- Create a lined pond at the low point, with habitat link to nearby pond area.
- Fence all pond areas to provide buffer of rough grassland to trap silt and fertiliser.

Further information was submitted by the applicant relating to the pond areas, which increased the size of the buffers around the ponds. The County's Ecology Team have confirmed that they are now happy with the proposed scheme.

Part 3 – Relevant Planning Documents

Relevant planning policies (see Policy Annex to the committee papers)

36. Planning applications should be decided in accordance with the Development Plan unless material considerations indicate otherwise.

The relevant development plan documents are:

- Oxfordshire Minerals and Waste Local Plan Part 1 – Core Strategy 2017
 - Vale of White Horse Local Plan 2031.
 - Saved policies of the Vale of White Horse Local Plan 2011.
37. The Vale of White Horse Local Plan 2031 Part 2: Detailed Policies and Additional Sites (VoWHLP 2031 Part 2) was subject to a period of consultation which closed on 4th May 2017. Whilst a material consideration, in accordance with paragraph 216 of the NPPF, these policies are at an early stage and should be given limited weight in any decision made.
38. The Government's National Planning Policy Framework (NPPF) is also a material consideration.

Relevant Policies

39. Oxfordshire Minerals and Waste Local Plan Part 1 – Core Strategy (OMWCS)

Policy M10: Restoration of mineral workings
Policy C1: Sustainable development
Policy C2: Climate change
Policy C4: Water environment
Policy C5: Local environment, amenity and economy
Policy C6: Agricultural land and soils
Policy C7: Biodiversity and geodiversity
Policy C8: Landscape

40. Vale of White Horse Local Plan 2031 Part 1: Strategic Sites and Policies (VLP1)

Core Policy 1: Presumption in Favour of Sustainable Development
Core Policy 44: Landscape
Core Policy 46: Conservation and Improvement of Biodiversity

41. Saved Policies of the Vale of White Horse Local Plan 2011 (VLP2011)

Policy DC6: Landscaping
Policy DC9: Impact of development on neighbouring uses
Policy DC12: Water quality and resources
Policy NE7: North Vale Corallian Ridge
Policy NE12: Great Western Community Forest
Policy L10: Safeguarding and improving rights of way

42. The Vale of White Horse Local Plan 2031 Part 2: Detailed Policies and Additional Sites (VLP2)

Development Policy 23: Impact of Development on Amenity
Development Policy 31: Protection of Public Rights of Way, National Trails and Open Access Areas

• **Part 4 – Analysis and Conclusions**

Comments of the Director for Planning and Place

43. Policy C1 of the OMWCS states that a positive approach will be taken to minerals and waste development in Oxfordshire, reflecting the presumption in favour of sustainable development contained in the National Planning Policy Framework. This presumption in favour of sustainable development, is also set out in Core Policy 1 of the VLP1.
44. Policy M10 of the OMWCS states that mineral workings shall be restored to a high standard in a timely manner to an after-use that is appropriate to the location. The proposed development seeks a change to the approved restoration scheme that would see some soil mounds remain

in place, and some alterations to the permitted contours. The site would still be restored to agriculture with the two permitted ponds remaining.

45. The proposed development should therefore be approved unless there are policy reasons or material considerations arising from the proposed changes. The main issues for this development are local environment, amenity and landscape, and biodiversity.

Local Environment, Amenity and Landscape

46. Policy C5 of the OMWCS states that proposals for mineral development shall demonstrate that they will not have an unacceptable adverse impact on the local environment, human health and safety, residential amenity and other sensitive receptors, and the local economy. Policy DC9 of the VLP2011 and Development Policy 23 of the VLP2 also seek to protect the amenities of neighbouring uses and the wider environment.
47. The proposed changes would not significantly alter the local environment in that there would be relatively minor changes to the contours of the site, there would be some cut and fill to achieve the proposed levels but this would have a limited short-term effect on the nearest houses, and a negligible effect to receptors beyond that, and there would be no effect on the local economy.
48. Policy C8 of the OMWCS seeks to protect the local landscape character from the adverse effects of minerals development. Core Policy 44 of the VLP1 also seeks to protect the landscape of the Vale of White Horse, as does policy DC6 of the VLP2011. Policy NE7 of the VLP2011 states that development that harms the character and appearance of the North Corallian Ridge will not be permitted. Policy NE12 states that developments that would prejudice the aims and objectives of the Great Western Community Forest will not be permitted.
49. The proposed development is within the area of worked out quarry, which is set well below the surrounding ground level. It would result in changes to the former quarry floor and along some edges of the former quarry, but there would be no wider effect on the landscape. There would specifically be no harm to the character and appearance of the North Corallian Ridge, and the aims and objectives of the Great Western Community Forest would not be prejudiced.

Biodiversity

50. Policy C7 of the OMWCS seeks a net gain in biodiversity from mineral developments. It also states that proposals shall make an appropriate contribution to the maintenance and enhancement of local habitats and biodiversity. Core Policy 46 of the VLP1 also seeks to conserve and enhance biodiversity, as does policy DC6 of the VLP 2011.

51. The proposed changes have been put forward partly because of the biodiversity value of the soil mounds that have since become wildlife habitats. The proposed change would therefore lead to an increase in biodiversity.
52. Consultation responses were received that stressed that damage had been caused to the ponds and so the habitat of a protected species and the need for a resurvey of the pond prior to the determining of this application. This is related to the issue of biodiversity and particularly the protected species on the site.
53. The proposed changes to the ponds would reflect the situation on site. Although there would be some changes to the ponds as currently permitted, the ponds, and their buffer zones would continue to provide suitable biodiversity habitats, including those for Great Crested Newts. Changes to the landform have been proposed to achieve a landform as close to the existing permitted contours, but taking into account the material on site.
54. Of the four recommendations by the County Ecologist, three (removal of newt fence, control of buddleia, and fencing of pond areas) have been included in the method statement and supplementary letter. There has been no proposal to create a new lined pond. It is though proposed to realign the ditch slightly which, along with the changes in the contours, might aid drainage into the existing ponds.
55. The proposed method statement has been submitted by the applicant's ecological consultants and it contains details as to how the disturbance to protected species would be avoided.
56. Although not all the recommendations of the County Ecology team were included in the final details of the application, the proposed scheme does now satisfy the concerns of the County Ecology team. The proposed development would, taking into account the habitats saved by not removing the soil mounds, not lead to an overall loss of biodiversity.
57. On the particular need to resurvey the sites, this was not raised as an issue by the County Ecology team, nor Natural England. The County Ecology team was involved in discussions leading up to the revised restoration scheme, and have indicated that they are satisfied with the resulting revised scheme as submitted.
58. The applicant's ecological consultant has advised on the management around the ponds in drawing up the method statement for the site. In particular, the removal of newt fencing by hand under the supervision of an ecologist, and its replacement with stock proof fencing to form a buffer zone.
59. Any damage wilfully caused to a protected species or its habitat could be an offence. The potential impact of the application as now proposed on

protected species has been assessed by officers as set out below and it is concluded that it is not considered to have an adverse impact upon protected species provided that the stated mitigation measures are implemented.

60. Concerns with regard to the alleged previous damage to the ponds and so potentially the GCN and their habitat were raised with the Wildlife Crime Officer within Thames Valley Police but it is understood that no prosecution has been brought.

Other Issues

61. Policy C2 of the OMWCS states that proposals for minerals restoration should take account of climate change. The proposed development would result in a restoration for the site which might otherwise require further import of material, and resultant additional carbon emissions. The proposal would not involve any issues related to climate change adaptation.
62. Policy C4 of the OMWCS states that there should be no unacceptable adverse impacts on the quantity or quality of surface or groundwater resources required for wildlife. Policy DC12 of the VLP2011 also seeks to protect water quality. The proposals would result in little change to the water environment. There would be some change in the way the water flows on the site, but this would be marginal, and the proposal largely follows the existing permitted scheme.
63. Policy C6 of the OMWCS states that among other things mineral developments should make provision for the management and use of soils in order to maintain agricultural land quality. The proposed scheme includes a method statement for the management of soils on the site which would make the best use of the available material, and would lead to a satisfactory agricultural restoration.
64. Policy C7 of the OMWCS states that development that would be likely to have an adverse effect on a Site of Special Scientific Interest will not be permitted except where the benefits of the development clearly outweigh the impacts. It also states that all proposals for mineral working shall demonstrate how the development will make an appropriate contribution to the maintenance and enhancement of geodiversity, including fossil remains. The proposed scheme respects the need to expose geological faces and to have collection resources from the mineral working, which may contain fossils, on the site. Some of the SSSI collection resources would need to be moved within the site temporarily while soil 'cut or fill' is carried out. This would be for a very short period of time and then they would be moved back to the approved location.
65. Policy L10 of the VLP2011 and Development Policy 31 of the VLP2 seek to safeguard and improve rights of way. There is a condition on the current permission to safeguard the right of way crossing the entrance to

the site. This had been necessary to protect the users from quarry traffic, but would not be needed now that the quarry has ceased operating. This proposal seeks only to alter the final restoration and would not involve the import or export of materials from the site. The proposal would then pass back into agricultural use and have no further effect on the rights of way network.

Conclusion

66. The proposed changes to the existing permission would allow for a satisfactory restoration of the site using the material available on the site, while at the same time allowing the retention of soil mounds that are of ecological value thus enhancing the site's overall biodiversity. There would be no significant harm caused by the proposed changes which would warrant refusal of the application, and the proposal should therefore be permitted in accordance with the presumption in favour of sustainable development.

RECOMMENDATION

67. It is **RECOMMENDED** that planning permission for application no. MW.0084/17 be approved subject to conditions to be determined by the Director for Planning and Place but to include the following:
 - 1) The development shall be carried out strictly in accordance with the particulars of the development, plans and specifications contained in the application (and letters/e-mails of amendment) except as modified by conditions of this permission. The approved plans and particulars comprise:
 - Application form dated 30/08/2017
 - Letter dated 29/08/2017
 - Supplemental Letter dated 17/04/2017
 - Ecology Statement dated 29/08/2017
 - Enzygo Method Statement dated 16/04/2018
 - Site Restoration Plan - Drawing no. DG/QO/WIC/RES/01 Rev D
 - Cut and Fill balance to achieve restoration levels as per drawing no. DG/QO/WIC/RES/01 Rev D
 - Site Location Plan - Drawing No: DG/OO/WIC/TEMP/02.
 - Aftercare Scheme set out in paragraph 3.0 onwards in the approved Restoration and Aftercare Scheme dated December 2012.
 - Conservation of geological interest features of SSSI Plan - Restoration and aftercare scheme dated December 2012 subject to revised restoration plan - DG/QO/WIC/RES/01 Rev D.
 - 2) The works relating to the restoration and aftercare of the site shall be carried out only between the following times: 0700 to

1800 hours Mondays to Fridays and 0700 to 1300 hours on Saturdays; no operations shall take place at any time on Sundays or recognised public holidays.

- 3) The site shall be completely restored by 30 September 2018 in accordance with the approved restoration scheme DG/QO/WIC/RES/01 Rev D.**
- 4) No reversing beepers, other than those emitting white noise, shall be fixed to, or used on, any mobile plant.**

Informative

All bird nests, eggs and young are protected under the Wildlife & Countryside Act 1981 (as amended) which makes it illegal to intentionally take, damage or destroy the nest of any wild bird while it is use or being built. Therefore, no removal of [trees, scrub, hedgerows, and grassland] should take place between 1st March and 31st August inclusive to prevent committing an offence under the Wildlife & Countryside Act 1981 (as amended). If any protected species [e.g. bats, badgers, dormice, otters, water voles, reptiles, amphibians, and breeding birds] are found at any point, all work should cease immediately. Killing, injuring or disturbing any of these species could constitute a criminal offence. Before any further work takes place a suitably qualified ecological consultant should be consulted for advice on how to proceed. Work should not recommence until a full survey has been carried out, a mitigation strategy prepared and licence obtained (if necessary) in discussion and agreement with Natural England. It is recommended that the native trees and seeds to be used in the restoration scheme are of UK (or ideally more local) provenance. For example, the Flora Locale website gives contact details for suppliers of UK provenance seed and plants: <http://www.floralocale.org/HomePage> A Habitat Regulations licence from Natural England for great crested newts may be required to make this permission lawful.

SUSAN HALLIWELL
Director of Planning and Place

June 2018

Compliance with National Planning Policy Framework

In accordance with paragraphs 186 and 187 of the NPPF Oxfordshire County Council take a positive and proactive approach to decision making focused on solutions and fostering the delivery of sustainable development. We work with

applicants in a positive and proactive manner by; offering a pre-application advice service. In this case the applicant did not take advantage of the opportunity. Any issues that occurred during the processing of the applications were raised with the applicant and this led to improvements rendering the developments acceptable.

The initial application would not have resulted in the satisfactory restoration of the site. The applicant was informed of this and amendments were made to the application to produce a scheme that was very close to the original proposal, but that could be achieved with the material on site.

European Protected Species

The Local Planning Authority in exercising any of their functions, have a legal duty to have regard to the requirements of the Conservation of Species & Habitats Regulations 2010 which identifies 4 main offences for development affecting European Protected Species (EPS).

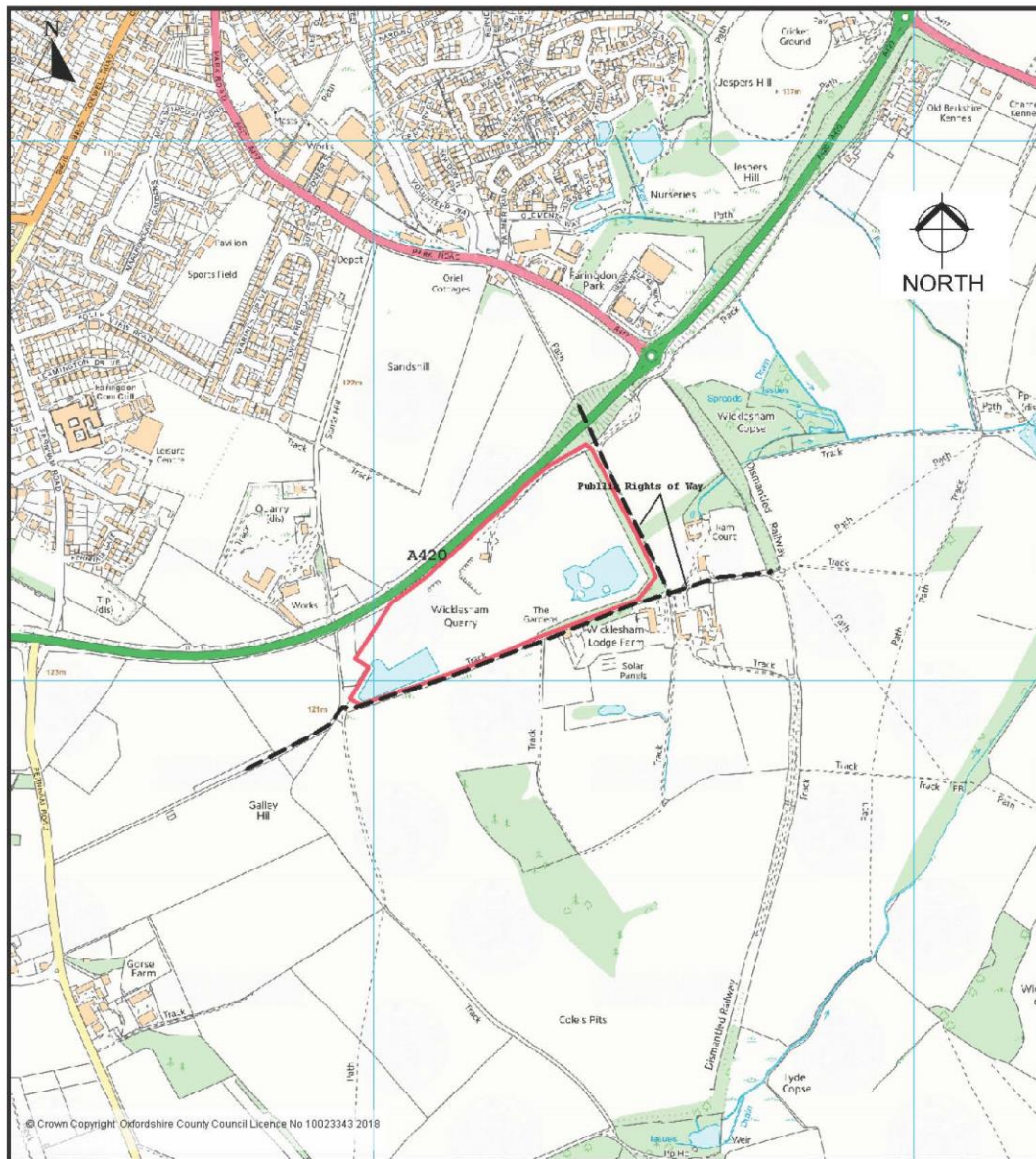
1. Deliberate capture or killing or injuring of an EPS
2. Deliberate taking or destroying of EPS eggs
3. Deliberate disturbance of a EPS including in particular any disturbance which is likely
 - a. to impair their ability –
 - i. to survive, to breed or reproduce, or to rear or nurture their young, or
 - ii. in the case of animals of a hibernating or migratory species, to hibernate or migrate; or
 - b. to affect significantly the local distribution or abundance of the species to which they belong.
4. Damage or destruction of an EPS breeding site or resting place.

Our records, the habitat on and around the proposed development site and ecological survey results indicate that a European Protected Species is likely to be present.

The mitigation measures detailed within this application and previous applications are considered to be convincing and in your officer's opinion will secure "offence avoidance" measures.

The recommendation:

Your officers consider that sufficient information has been submitted which demonstrates that measures can be introduced which would ensure that an offence is avoided. The application is therefore not considered to have an adverse impact upon protected species provided that the stated mitigation measures are implemented.



Map Legend
No overlays selected

30 April 2018

0 m 250 m 500 m

Scale 1: 10000