



Adroddiad

Ymchwiliad a gynhaliwyd ar 07-10/03/06

Ymweliad â safle a wnaed ar 14/03/06

Report

Inquiry held on 07-10/03/06

Site visit made on 14/03/06

gan/by Stuart B Wild MRTPI MCM

**Arolygydd penodwyd gan Cynulliad
Cenedlaethol Cymru**

**an Inspector appointed by the National
Assembly for Wales**

Dyddiad/Date 06/06/06

Proposed restoration of former brickwork & quarry, development of up to 300 dwellings, creation of open space, woodland, an area of habitat creation and landscaping, construction of new and improved vehicular and pedestrian access

Former Lane End Brickworks, Church Road, Buckley, Flintshire CH7 3JQ

Addendum Report

Impact of the Proposed Development on the Special Area of Conservation (SAC)

Background

1. In terms of the possible effects on the SAC the main aspect of the proposal is the filling in of the large lagoon. That is the main breeding pond for great crested newts (GCN) in this SAC. Therefore before the inquiry most parties took the view that the loss of this pond would have a significant effect on the SAC in view of the site's conservation objectives as a breeding site for GCNs.

2. The proposal contained details for the creation of a replacement breeding habitat for the GCN in the supporting revised environmental statement (Doc 3). This would be phased over the period of the development of the site. The first phase would involve re-grading the land immediately to the north of the large lagoon. In this area there would be created a series of small shallow ponds which would form alternative breeding areas and associated habitat. This is anticipated to take 3 years. Once properly established, the next phase would involve the re-grading of the southern part of the site including the draining and filling in of the large lagoon. On top of the former area of large lagoon, but at a higher level on top of the re-graded material, the remainder of the small ponds and habitat would be created.

3. Details of the physical works involved with the creation of the replacement habitat were included in the supporting revised environmental statement (Doc 3). The main areas of concern to the Countryside Council for Wales (CCW) were the supply of pollution free water for the breeding ponds; the phasing of the proposals; and the future funding of the proposals. These points were covered by Redrow's witnesses in cross-examination.

4. First, the main supply of water would be rainfall on the SAC itself and on the roofs of the dwellings. This would be kept separate from rainfall on potentially contaminated ground level areas and roads. It would be piped to the top level of breeding ponds from where it would filter down to the lower levels. Provision would be included to enable the water supply to be inspected and stopped in the event of pollution. Given the size of site and the levels it was likely that there would be several physically separate systems of drainage and ponds. In the event of any pollution reaching one set of ponds it would not contaminate the other series of ponds. Second, the phasing had been designed to enable the creation of established replacement breeding ponds before any work takes place on the existing lagoon. The final result would be a much increased area of ponds and habitat. The ponds would be relatively small and shallow giving better breeding and habitat conditions for the GCN than the one large and deep existing lagoon. Third, as regards the funding of the works, during the physical development of the site the works and staffing would be part of the developer's normal development costs. The long term funding would be provided by an invested lump sum of money provided by Redrow and a levy on the purchasers of the new dwellings. This method ensures that there is funding available for the long term maintenance of the site together with the funding of a permanent warden. In Redrow's view the alternative of leaving the site in its present condition would not give any means of maintenance or warden provision. This would leave a potentially dangerous site open to the possibility of continued vandalism with the potential for permanent pollution of the main lagoon.

5. Details of the agreements/undertakings (Docs 7 & 8) and agreed planning conditions (Doc 9) were supplied at the inquiry and incorporated the additional detailed points explained in the evidence and cross examination of Redrow's witnesses. These include detailed provisions, or provision for subsequent details to be agreed by the local planning authority, which will ensure that the creation of the new habitat can be delivered by enforceable means. They also include the details of funding for the permanent maintenance of the habitat and for the full time warden.

Views of the Main Parties

6. CCW's position at the start of the inquiry was that the proposal would significantly affect the SAC and that the provision of the replacement habitat etc could only be taken into account as a compensatory measure. However, in view of Redrow's evidence and the answers given in cross examination as included in paragraph 4 above, much more detail of the whole proposals became clear. The witnesses for CCW in effect agreed in cross examination that there was nothing in the legislation or policy guidance that defined the difference between mitigatory and/or compensatory measures in such a way that precluded the consideration of the whole of the proposals together. Bearing in mind the extra information given by Redrow's witnesses and taking into account the content of the agreements/undertakings (Docs 7 & 8) and agreed planning conditions (Doc 9), in the circumstances of this case, the creation of the alternative habitat was an integral part of this proposal. At this stage of the inquiry CCW requested an adjournment to reconsider their position. Following the adjournment it was accepted by CCW that in the specific circumstances of this case the proposal did not adversely affect the integrity of the site.

7. Following the clarification of CCW's position Redrow also relied on that part of their evidence which concluded that the proposal did not adversely affect the integrity of the site and therefore that permission could be granted under Regulation 48. Redrow's evidence had covered the alternative situation in that if the integrity had been affected permission could still have been granted under Regulation 49 having regard to such matters as imperative reasons of overriding public interest.

8. Flintshire's consistent view was that taking into account all aspects of the proposal and the appropriate agreements/undertakings and conditions then the proposal did not affect the integrity of the site.

Inspectors Conclusions

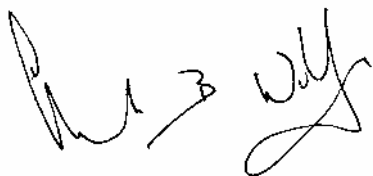
9. I have taken into account in particular the guidance contained in TAN 5 and the draft revised TAN 5. These documents were available to the parties at the inquiry. In addition the Habitats Regulations, Natura 2000, and relevant policy documents were available to all parties.

10. Regulation 48 of the Habitats Regulations controls the granting of planning permission for development which is likely to significantly affect a European site such as this SAC. The decision-taker must first establish whether the proposal is directly connected with or necessary to the management of the site for nature conservation. Whilst the aspects of habitat creation and future site maintenance and management could be considered under this heading, it is the whole project which must be considered including the residential and associated works. Therefore the proposal is likely to have a significant effect on the SAC. In this case there is no

evidence to suggest that any other projects are likely to affect this SAC other than this proposal. It can therefore be considered on its own merits. Similarly it is the GCN and their habitat which must be taken into account under Regulation 48. No other specified interest feature applies to the SAC itself. The implications of the proposal on the site's conservation objectives were fully explored in the Environmental Statement, evidence and in cross examination. CCW and the public were involved in the process and represented at the inquiry. By itself it could not be ascertained that the filling in of the main lagoon would not affect the integrity of the site. However, following cross examination of the witnesses, the main parties agreed that, with compliance with the conditions, the planning agreement and undertaking, the proposal, taken as a whole, would not adversely affect the integrity of the site.

11. I take particular note that this proposal includes a carefully phased series of steps designed to ensure the continued presence of a significant GCN breeding habitat during all stages of the implementation of the proposal. The final version of the replacement habitat would be significantly better for the long term conservation of the GCN and their habitat in this SAC. The replacement of one large deep lagoon with a large number of small shallow ponds gives a much improved breeding habitat. Maintenance will ensure that they remain free from silt and overhanging vegetation which would reduce the value of any breeding ponds. The provision of a number of small ponds with physically separate sources of water will reduce the danger of any accidental pollution affecting all the breeding ponds. The existing large lagoon on this derelict site is potentially at much greater risk from pollution, whether accidental or deliberate. The proposal includes funding for the permanent maintenance of the habitat and the provision of funding for a permanent warden post. This will do much to remove the long term threat of trespass and vandalism, both to the part of the SAC directly affected by the proposal, and the adjoining areas designated within the SAC.

12. In my view, with the conditions and undertakings in place, the proposal would not have any harmful effects on the ecological objectives of the SAC and so would not adversely affect the integrity of the site. Therefore planning permission can be granted under Regulation 48, subject to the recommended conditions (Appendix 1 to main report)



Inspector