

14/16/0022

MR K PHILLIPS

**Erection of an aviary building on land opposite Broomhay, White Street, Ham, Creech St Michael**

Location: LAND OPPOSITE BROOMHAY, WHITE STREET, HAM, CREECH  
ST MICHAEL

Grid Reference: 328764.125141

Full Planning Permission

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## **Recommendation**

### **Recommended decision: Conditional Approval**

#### **Recommended Conditions (if applicable)**

1. The development hereby permitted shall be begun within three years of the date of this permission.

Reason: In accordance with the provisions of Section 91 Town and Country Planning Act 1990 (as amended by Section 51(1) of the Planning and Compulsory Purchase Act 2004).

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

(A4) Location Plan  
(A4) Site Plan  
(A4) DrNo 001 West and East Elevations  
(A4) DrNo 002 South and North Elevation  
(A4) DrNo 003 First Floor Plan  
(A4) DrNo 004 Section A-A

Reason: For the avoidance of doubt and in the interests of proper planning.

3. No wall construction shall take place until a detailed section drawing and/or specification to show the concrete block plinth with vertical mortar joints and weep vents has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure the development would not give rise to any increased flood risk in accordance with Policy CP8 of the Taunton Deane Core Strategy.

4. (i) Before any wall construction is commenced, a landscaping scheme, which shall include details of the species, siting and numbers to be planted, shall be submitted to and approved in writing by the Local

Planning Authority.

- (ii) The scheme shall be completely carried out within the first available planting season from the date of commencement of the development, or as otherwise extended with the agreement in writing of the Local Planning Authority.
- (iii) For a period of five years after the completion of each landscaping scheme, the trees and shrubs shall be protected and maintained in a healthy weed free condition and any trees or shrubs that cease to grow shall be replaced by trees or shrubs of similar size and species, or the appropriate trees or shrubs as may be approved in writing by the Local Planning Authority.

Reason: To ensure that the proposed development does not harm the character and appearance of the area in accordance with Policy DM1 of the Taunton Deane Core Strategy.

- 5. The development hereby permitted shall be used as a private aviary for the keeping and breeding of peregrine falcons only. It shall at no other time be used in connection with any commercial and/or retail activity of any kind.

Reason: In the interests of residential amenity, highway safety and flood risk in accordance with Policies CP8, DM1 & DM2 of the Taunton Deane Core Strategy.

- 6. The development hereby permitted shall accommodate a maximum of 8 breeding pairs of birds of prey at any one time.

Reason: In the interests of residential amenity in accordance with Policy DM1(e) of the Taunton Deane Core Strategy.

- 7. The tree screens as shown on the submitted Site Plan shall be completed before the building hereby permitted is first occupied and thereafter maintained as such.

Reason: To ensure that the proposed development does not harm the character and appearance of the area in accordance with Policy DM1 of the Taunton Deane Core Strategy.

#### Notes to Applicant

- 1. In accordance with paragraphs 186 and 187 of the National Planning Policy Framework the Council has worked in a positive and pro-active way and has imposed planning conditions to enable the grant of planning permission.
- 2. WILDLIFE AND THE LAW. The protection afforded to wildlife under UK and EU legislation is irrespective of the planning system and any activity undertaken on the tree(s) must comply with the appropriate wildlife legislation.

BREEDING BIRDS. Nesting birds are protected under the Wildlife and

Countryside Act 1981 (as amended) and if discovered must not be disturbed. If works are to be carried out during the breeding season (from February to August, possibly later) then the tree(s) should be checked for nesting birds before work begins.

BATS. The applicant and contractors must be aware that all bats are fully protected by law under the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Natural Habitats and Species (Amendment) Regulations 2012, also known as the Habitat Regulations. It is an offence to intentionally or recklessly damage, destroy or obstruct access to structures or places of shelter or protection used by bats, or to disturb bats whilst they are using these places.

Trees with features such as rot holes, split branches or gaps behind loose bark, may be used as roost sites for bats. Should a bat or bats be encountered while work is being carried out on the tree(s), work must cease immediately and advice must be obtained from the Government's advisers on wildlife, Natural England (Tel. 0845 1300 228). Bats should preferably not be handled (and not unless with gloves) but should be left in situ, gently covered, until advice is obtained.

3. You are reminded that the requirements of Animal Health (DEFRA), English Nature, the RSPCA or any other animal organisation is independent from planning legislation and it is your responsibility to ensure all relevant licencing and other documentation for the breeding and keeping of birds of prey is obtained.
4. The applicant should be aware that the Environment Agency would oppose any conversion of this proposal into a residential development in the future on flood risk grounds.

## **Proposal**

Permission is sought for the erection of an aviary building to be used for the breeding of peregrine falcons. The building would be able to accommodate up to 8 pairs of breeding birds and is proposed to be used solely by the applicant, who wishes to pursue their hobby.

The aviary would measure approximately 14.5m in length by 10m in width to provide 8 pens internally with a covered walkway running in-between. The pens themselves would measure approximately 3.1m in height and incorporate a wire mesh roof. The covered walkway would utilise a box profile pitched roof measuring approximately 4.1m in height to the ridge.

The aviary is to be constructed with vertical timber boarding, with the walls supported by a concrete block plinth, with weep vents, to allow the movement of water across the site. The internal floor will not utilise any form of new hard-standing.

The pens themselves have been designed especially for the breeding of falcons, who can only be housed in private accommodation (skylight and seclusion aviaries). In terms of the use of the pens, two are proposed to house young birds and two are proposed to house retired birds. This would leave three pens that could potentially house breeding birds with one remaining spare pen.

The site itself has been largely cleared of overgrown bramble, blackthorn and other vegetation, with a screen of trees left in place to the north of the building to further screen the building from the road. A further tree screen would be retained to the north-west of the building.

## **Site Description**

The application site concerns a parcel of land to the south of the main linear cluster of houses that run through Ham; a small hamlet situated adjacent to White Street. Ham itself lies approximately 0.5 miles south-east of the village of Creech St Michael.

The application site itself is triangular in shape and relatively flat. Drainage ditches surround the boundary of the site and there are numerous trees and other vegetation situated on the banks of the boundary. The land itself has been largely cleared of overgrown vegetation over recent months but two areas of tree planting have been maintained centrally within the site.

The site is accessible via White Street to the north and there is a vehicular access gate adjacent to the road.

The area is predominantly rural, with the majority of land surrounding the site used for agricultural purposes. The closest residential properties are situated to the north of the site on the opposite side of the road; the river Tone lies to the rear of these properties. The site itself is within a designated flood risk area and is situated within flood zones 2 & 3.

## **Relevant Planning History**

Pre-application advice was provided prior to the submission of the proposal. It was agreed that whilst the site was generally unsuitable for the majority of development proposals, the principle of erecting a bird aviary in this location would be commensurate with the sites agricultural setting. Advice regarding flood risk, visual amenity, residential amenity, parking and security were also provided:

14/16/0008 – Change of use of land for bird of prey breeding and erection of aviary building. Pre-application advice provided 18<sup>th</sup> February 2016.

## **Consultation Responses**

*CREECH ST MICHAEL PARISH COUNCIL* - Object to the proposal:

Due to the close proximity with properties and the noise these birds will create in the absence of its onsite owner.

*SCC - TRANSPORT DEVELOPMENT GROUP* - Refer to standing advice. Standing advice provides standard detail for the layout of acceptable agricultural access.

*ENVIRONMENT AGENCY* - No objection to the proposal but wishes to make the following comments:

The proposal falls within Flood Zone 3, which is an area with a high probability of flooding, where the indicative annual probability is 1 in 100 years or less from river sources (i.e. it has a 1% or greater chance of flooding in any given year).

The ground level within the aviary and the surrounding area must not be raised and must remain permeable as indicated within the Flood Risk Assessment accompanying this application.

The applicant should be aware that the Environment Agency would oppose any conversion of this proposal into a residential development in the future on flood risk grounds.

*LANDSCAPE* - Comments as follows:

No objection to the structure as it will be screened from the road by existing trees on site.

*ENVIRONMENTAL HEALTH - NOISE & POLLUTION* - Following verbal discussions with the EH Officer, it was agreed that the number and species of birds proposed was highly unlikely to cause any significant noise nuisance. It was also confirmed that no noise complaints have ever been received from the applicants' neighbours, where birds of prey are currently kept at home (in excess of 10 years). EH have since confirmed in writing that they have no objection to the proposal.

## **Representations Received**

A site notice was erected 10<sup>th</sup> May 2016 and neighbours notified 27<sup>th</sup> April 2016. A total of 9 comments have been received to include 1 letter of support and 1 neutral comment

7 objections. The comments are summarised below as follows:

### **Objections**

Principle of development & use of the site

- Would set precedent for development of adjacent land.
- Site recently marketed as 'amenity land' and the use should be retained.

- Proposal more representative of a commercial use.
- Applicant already runs a commercial pest control business, which raises suspicion regarding the intended use of the building.
- Site could be re-developed for other purposes in the future.

#### Design/visual amenity

- Building excessive in size and scale, exceeding that of the majority of residential properties in the area.
- Concrete footings unnecessary to support timber structure and an alternative perimeter plinth should be utilised.
- Out of character with the area and visually intrusive.

#### Wildlife

- Proposal contrary to DEFRA guidance. *[Case Officer Note: This is independent from planning legislation and is not considered to constitute a significant planning merit].*
- Impact on local wildlife if birds are exercised locally.

#### Highways

- Increased vehicle movements.
- No parking areas available.
- Parked vehicles would restrict traffic flow along White Street.

#### Residential amenity

- Noise impacts.
- Increased disturbance from increased vehicle movements.

#### Other

- Increased flood risk.
- An Environmental Impact Assessment (EIA) should be carried out. *[Case Officer Note: The development is not considered to constitute EIA development].*
- Security issues.
- Level of detail provided insufficient to make a decision.
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#### Support

- Applicant has explained intentions and has worked hard clearing the site.

#### Neutral

- No concerns about the structure itself but would like further clarification about the numbers/species of birds proposed to house, particularly in relation to

noise.

- Would not wish to see pigeons housed within the structure.

## **Planning Policy Context**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise.

The development plan for Taunton Deane comprises the Taunton Deane Core Strategy (2012), saved policies of the Taunton Deane Local Plan (2004), the Taunton Town Centre Area Action Plan (2008), Somerset Minerals Local Plan (2015), and Somerset Waste Core Strategy (2013).

Relevant policies of the development plan are listed below. Policies from emerging plans are also listed; these are a material consideration.

CP8 - CP 8 ENVIRONMENT,  
DM1 - TD CORE STRATEGY - GENERAL REQUIREMENTS,  
DM2 - TD CORE STRATEGY - DEV,

## **Local finance considerations**

The development would not be liable for any Community Infrastructure Levy (CIL) payments.

## **Determining issues and considerations**

The main issues in the consideration of this application are the principle of development, impact upon landscape/visual amenity, impact upon residential amenity, impact upon highways, impact upon wildlife and flood risk.

### **Principle of development**

The application site is situated outside the defined settlement limits of the area, where new forms of development are generally resisted. This, in addition to the sites setting within a designated flood risk area, makes the vast majority of development proposals unsuitable and contrary to local and national planning policy guidance. However, it is recognised that Policy DM2 of the Taunton Deane Core Strategy does support non-residential agricultural and forestry related buildings commensurate with the role and function of the unit.

The land itself is not formally designated within any local planning policy designations and is not directly related to any working agricultural unit. However, given the sites setting within a primarily rural location, the use of the land would be considered to fall within an agricultural use. The overall size, scale and design of the building is considered to be similar to the vast majority of agricultural buildings, which would otherwise be acceptable in such countryside locations. Furthermore, the building proposed would be privately owned and used as a means of pursuing a hobby for the breeding of peregrine falcons, which is considered to be commensurate with the area's rural setting. The principle of a new aviary building in this location is therefore considered to be acceptable in this respect.

The concerns relating to the exact intended use of the building, to include the use of the building as a commercial breeding business, have been noted, and it is recognised that the applicant does indeed have an existing commercial business where birds of prey are offered as a means of pest control. However, the applicant has confirmed in writing that the proposal is for private use only and is required solely as a means to pursue an existing hobby within a quiet and secluded location, close to where the applicant lives. On this basis, the proposal is considered to be acceptable but it is deemed reasonable to attach a restrictive condition to any permission granted to ensure that the development cannot be used for any commercial or other purpose.

With regard to the concerns in relation to the development setting a precedent for future development of adjacent land, this would of course be subject to separate planning applications, whereby the planning considerations of individual proposals would be assessed on their own merits. This is therefore not considered to constitute a significant reason for refusal.

In light of the reasons outlined above, the principle of development is considered to be acceptable.

### **Landscape/Visual amenity**

The size and scale of the proposed building is reasonably large, however it is understood that the building has been designed to a specification suitable for the breeding of peregrine falcons. Consideration still has to be given to any potential impact the building may have on the visual amenity of the area and surrounding landscape.

The building would be reasonably well set-back within the site, approximately 25m from the edge of the carriageway to the north. The site itself has over the last few months been largely cleared of overgrown trees and other vegetation, with the exception of two bands of tree groups, which have been kept in place to help screen the proposed building. In addition, the site boundary consists of tree and other planting, which help screen the site further.

Whilst it is acknowledged that there would be some sightlines of the building from White Street, particularly during winter months when there is less leaf cover, the building is not considered to cause significant harm to the visual amenity of the area or surrounding landscape. The site itself is reasonably well enclosed and would not



appear significantly prominent from the public realm. Furthermore, the TDBC Landscape Officer has also confirmed that the proposed screening of the building is adequate and has no significant landscape objections.

In terms of the building's design, the building would utilise a suitable pallet of building materials typical of modern agricultural design. The use of vertical timber boarding and box profile roof is considered to be commensurate with the rural setting of the area. As such, the development is not considered to cause significant harm to the character or appearance of the area and the development is considered to be acceptable on these grounds.

### **Residential amenity**

The closest neighbouring properties are situated on the opposite side of White Street, with the closest property being situated approximately 35m from the location of the proposed aviary building. The site itself is relatively well enclosed and the building is considered to be a sufficient distance away not to give rise to any issues in relation to overbearance, loss of light or privacy.

Notwithstanding the above, the comments concerning the potential noise nuisance that could be generated by the development have been noted. There are no specific noise requirements that aviary buildings would be expected to comply with and, as such, the assessment of potential noise nuisance from peregrine falcons is particularly difficult to assess. In light of this, further advice has been sought from an appropriate wildlife expert from the Hawk Conservancy Trust (HCT), as well as consultation with the TDBC Environmental Health Team.

Following verbal discussions with the HCT, it is understood that peregrine falcons are particularly secretive birds, which would not generally generate significant levels of noise within an aviary type environment. This is because the birds themselves would not be visible from outside the aviary and would not be aware of any activity outside the pens. Furthermore, the position of the aviary is set-back well within the site in a reasonably secluded location, which is unlikely to be disturbed.

It is also understood that the applicant has kept falcons in excess of 10 years, some of which are kept at their home address within the rear garden. Having checked with the TDBC Environmental Health Team, no noise complaints have been received from the neighbours during this period. The building proposed would not be situated immediately adjacent to any residential properties and whilst it is recognised that there may be some noise from the birds, the level of noise generated is not considered to constitute a significant level of disturbance to warrant refusal.

To ensure potential noise nuisance is not exacerbated beyond unacceptable levels, it is deemed reasonable to restrict the number of breeding birds housed within the aviary. It is therefore considered that a condition should be attached to restrict the number of birds to a maximum of 8 breeding pairs.

In light of the reasons outlined above, the development is considered to be acceptable on residential amenity grounds.

## **Highways**

There is an existing access available to the site via White Street to the north but no changes are proposed to this access point itself. As the development is proposed to be used solely by the applicant as a means of pursuing a hobby, the development is not considered to give rise to any significant increase in vehicle movements over or above existing levels that would cause harm to highway safety. The existing access point is therefore considered to be sufficient on these grounds.

Having visited the site, it is evident that there is sufficient space available within the site for the parking of vehicles. However, it is noted that no formal parking areas have been designated as part of this submission. Whilst this would normally be a requirement, the development of a more formal parking area is considered to be unnecessary for the use of the site by one person. Furthermore, given the sites setting within a designated flood risk area, the Council would seek to resist any changes that may interfere with the permeability of the site.

Instead, it is considered that the applicant could park informally on the site, or indeed continue to park adjacent to the existing access gate. Having visited the site, it is evident that there is sufficient space to park a vehicle here without obstructing the public highway. For this and the reasons outlined above, the development is considered to be acceptable on highways grounds.

## **Wildlife**

The applicant has confirmed, in writing, that the aviaries are specifically designed for breeding birds and at no times will these birds be allowed outside the enclosures. On this basis, the development is not considered to have any significant impact upon the local wildlife of the area. However, it should be noted that the requirements of DEFRA, the RSPCA or any other wildlife organisation, for the keeping and breeding of birds of prey, is independent from the planning system.

## **Flood risk**

The application site is situated within flood zones 2 & 3, which is identified as an area at risk of flooding. As such, it is essential to ensure that the development of the site would not lead to a significant increase in flood risk over or above existing levels.

A Flood Risk Assessment has been submitted to accompany the application. The building itself would not utilise any form of new hard-standing. Instead, the internal floor of the building would remain as existing, allowing any rainwater that falls through the wire mesh roof to drain naturally. In addition, the concrete block plinths,

on which the walls of the building would be supported, would incorporate weep vents to allow the free movement of water across the site.

The Environment Agency have confirmed their agreement with the submitted Flood Risk Assessment and have no objection to the proposal. As such, the development is considered to be acceptable on these grounds.

### **Conclusion**

The principle of development is considered to be acceptable and the development would not give rise to any significant issues in relation to visual amenity, residential amenity, highways, wildlife or flood risk. In light of these reasons, outlined above, it is recommended permission be granted subject to conditions.

In preparing this report the planning officer has considered fully the implications and requirements of the Human Rights Act 1998.

**Contact Officer: James Culshaw**