

COMMITTEE REPORT

Date: 18 January 2018 **Ward:** Fulford And Heslington
Team: Major and **Parish:** Fulford Parish Council
Commercial Team

Reference: 17/00904/FUL
Application at: Germany Beck Site East Of Fordlands Road York
For: Creation of wetland habitat suitable for water voles
(retrospective)
By: Persimmon Homes (York) Ltd
Application Type: Full Application
Target Date: 13 June 2017
Recommendation: Approve

1.0 PROPOSAL

1.1 The application seeks full retrospective separate planning permission for the engineering operations involved in the creation of a wetland habitat suitable for water voles. It is not a section 73 variation to the outline planning permission. The creation of the habitat was required following the discovery of water voles in Germany Beck in 2015 and confirmed following a survey in 2016, which would be potentially displaced by the proposed works to the beck as a result of the Germany Beck housing scheme. The form and design of the wetland habitat and the timing of its creation was agreed under a conservation licence by Natural England.

1.2 The wetland habitat is located within an area of land to the south of Germany Beck, to the east of the cemetery on Fordlands Road. The area is designated a Site of Importance to Nature Conservation (SINC). The habitat consists of an elliptical shaped earth bund measuring 30m x 20m approximately set at 45 degrees and extending to a height of 9.5m AOD (existing ground level is approximately 7.6m AOD), encircled by a 4.5m wide moat of water dropping to 6.0m AOD. The habitat has been designed to increase the habitat available for water vole and provide them with a refuge from flooding by means of a raised island. The habitat is divided into four planting zones, including marginal planting along the water's edge and along the shallow bank, submerged planting in the shallow water and planting on the mound.

ENVIRONMENTAL IMPACT ASSESSMENT REQUIREMENTS

1.3 The Germany Beck housing scheme fell within the thresholds and criteria of Schedule 2 Development listed in the then Town and Country Planning (Environmental Impact Assessment) Regulations 1999 and was therefore considered to be EIA Development that was accompanied by an Environment Statement ("ES").

1.4 An addendum (dated January 2017) to the ES has been submitted with this full application. However, this application is a separate full application for engineering excavations required by Natural England to comply with their licence requirements under separate legislation. It is not a subsequent application as it does not seek reserved matters consent nor is it required under an approval of detail under a condition on the outline consent. Further, it does not conflict with the management plan approved as part of a previous condition of approval on the outline. The site of the full application is not within a 'sensitive area' as defined in the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 ("EIA Regs 2017"). When considered in isolation, the application for a water vole habitat is not an application for planning permission for EIA Development under Schedule 1 or 2 of the EIA Regs 2017. The application would only fall within Schedule 2 by virtue of para.13(b) if the change to the approved development (i.e. the residential scheme) is likely to give rise to significant adverse effects on the environment. Given the scale of the proposed development, the reason for it and the environmental information already available about ecology, archaeology and flood risk in particular, it is considered that there would likely be no such significant adverse environmental effects.

1.5 Therefore, despite the submission of the ES Addendum, the application would not be EIA Development by virtue of Schedule 1 or 2 of the EIA Regs 2017 and, as such, is not an EIA Application that needs to be publicised as such.

2.0 POLICY CONTEXT

2.1 Yorkshire and Humber Regional Spatial Strategy – Green Belt policies YH9(C) and Y1 (C1 and C2));

2.2 National Planning Policy Framework (March 2012);

2.3 City of York Draft Local Plan (2005) – relevant policies:

- CGP15A - Development and Flood Risk
- CYNE5A - Local Nature Conservation Sites
- CYNE6 - Species protected by law
- CYNE7 - Habitat protection and creation
- CYHE10 - Archaeology
- CYGB1 - Development within the Green Belt

2.4 Pre-Publication Draft Local Plan (2017) – relevant policies:

- SS2 – Role of York's Green Belt
- D2 – Landscape and Setting
- D6 – Archaeology
- D7 – The significance of Non-Designated Heritage Assets
- G12 – Biodiversity and Access to Nature

- GB1 – Development in the Green Belt
- ENV4 – Flood Risk

3.0 CONSULTATIONS

INTERNAL

Planning and Environmental Management (Archaeology)

3.1 The applicant has submitted information to support the application to regularise the creation of a wetland habitat, and Appendix 23 Summary of Archaeological Work to date, Environmental Statement Update, includes a brief reference to the archaeological work carried out by MAP in association with the creation of this wetland habitat.

3.2 The proposal raises no new environmental issues in relation to the cultural heritage of this site, and the recording measures (a watching brief on the groundworks for this development) are adequate.

3.3 The application may therefore be approved subject to the applicant including a report on the archaeological watching brief in the main report for this phase of archaeological activity as set out in the approved WSI submitted for Condition 12 of approval 01/01315/OUT.

Planning and Environmental Management (Ecology and Countryside)

3.4 The presence of water voles on Germany Beck and the impact on this species from development was previously considered through the planning system during the outline application 01/01315/OUT. Various surveys have been undertaken over a period of time, including in May 2011 as part of the reserved matters Environmental Statement (12/00384/REMM) which did not record water voles.

3.5 Water vole are a mobile species which respond to habitat changes such as water levels and will readily colonise new, or re-colonise, areas. In 2015 water vole were recorded along Germany Beck. Formal water vole surveys undertaken in 2016 by QUANTS confirmed their presence along sections D, E and H of Germany Beck (the section of the beck eastwards of Germany Lane Meadow Site of Importance for Nature Conservation).

3.6 A water vole licence was granted by Natural England in April 2016 to undertake works which would directly impact on water vole habitat. No comment is given on the impacts on water voles, mitigation and compensation as this has already been assessed and approved by Natural England through the licensing process. As part of the licence requirements monitoring surveys will be undertaken during September/October on an annual basis until 2019 and Natural England take responsibility for ensuring the requirements of the licence are adhered to.

3.7 The main element of the water vole habitat compensation, a wetland area including an 'off line' pond, has been created within Germany Lane Meadow Site of Importance for Nature Conservation (SINC). This site was surveyed in 2008 and included in the City of York Biodiversity Audit (2010) which reviewed the Local Sites in York. Using the North Yorkshire SINC Guidelines criteria Gr4 (neutral grassland), the site scored nine out of eight indicator species overall although only seven were recorded as being at least 'occasional' with two additional species recorded more rarely. The site was felt to have declined in the 12 years since the original designation (1996) but although the site was now of borderline quality the North Yorkshire SINC Panel recommended the site for designation due to old unimproved grassland, particularly on a floodplain, being an increasingly rare habitat.

3.8 The site was re-surveyed in 2016 and the species interest was found to have declined further still, most likely due to lack of management and increased flooding events.

3.9 Sites designated as SINC's have no direct legal protection, such as Sites for Special Scientific Interest, which require them to be managed in a specific way, but they are afforded protection through the planning system.

3.10 The creation of a wetland habitat (pond) which extends to approximately 30 metres by 30 metres within the SINC has resulted in the loss of some grassland habitat and disturbance to other areas through construction. This area was recorded in 2016 as being heavily dominated by Himalayan balsam with additional species present including greater willowherb, common nettle, couch, false oat-grass, meadow vetchling and meadowsweet.

3.11 The wetland habitat has been designed specifically to benefit nature conservation and therefore the loss of degraded grassland is not considered a significant negative impact in the long-term. Currently the management of the SINC is set out in the previously agreed Landscape Management Specification: Nature Park by Rosetta Landscape Design (2015), including the control of Himalayan balsam, annual hay cut and monitoring. The creation of wetland habitat suitable for water vole does not significantly alter this management or impact on the management of the rest of the Nature park, however through the Natural England licence application it has been proposed to produce a SINC specific 20 year management plan and this approach is supported.

3.12 In conclusion there are no objections to this retrospective planning permission for wetland habitat within Germany Lane Meadow SINC, subject to a condition to secure a SINC specific management plan which will sit alongside the Landscape Management Specification: Nature Park by Rosetta Landscape Design (2015).

Flood Risk Management Team

3.13 No objections to the works. They are unlikely to lead to any significant environmental impacts.

EXTERNAL

Environment Agency

3.14 No comments to make.

Ouse and Derwent Internal Drainage Board

3.15 The site sits within the Board's district and the Board has assets adjacent to the site in the form of Germany Beck and Fulford Ings, which are subject to high flows during storm events. The Board welcomes the creation of the habitat for water voles and has no objection to this application. Informative requested to remind the applicant that any work within 9m of any Board watercourse requires formal Board Consent.

Fulford Parish Council

3.16 Do not oppose the principle of a refuge but make following comments and seek safeguards or conditions:

- request confirmation that the LPA will comply with 2011 EIA Regulations;
- the application seeks to amend details approved under outline condition 10 (nature park) and it is unclear whether the application is made under section 73;
- support the principle of a water vole refuge though question the location entirely within flood zone 3;
- habitat is compensation for loss of bankside habitat and not a permanent positive ecological impact as claimed in the Environmental Statement;
- the development will result in the loss of public amenity open space within the Germany Meadow for which there is no compensation proposed;
- incorrect to seek to justify the loss of habitat and open space because of deterioration of SINC, which is entirely due to the deliberate neglect since the developer acquired the land and comply with condition 10 of the approval requiring removal of Himalayan Balsam;
- highlight the current condition of the new refuge and that it is unfinished;
- development has not been constructed in accordance with the submitted plans and agreed with Natural England under the licence process;
- construction without planning permission has resulted in adverse environmental effects not being addressed in the updated ES including archaeology investigation, land drainage impacts following severing of pipes and control of Himalayan Balsam.

4.0 APPRAISAL

4.1 The main considerations relevant to the determination of this application are:

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- Principle of development
- Green Belt policy
- Biodiversity
- Flood risk and drainage
- Archaeology

BACKGROUND AND PLANNING HISTORY

4.2 Outline planning permission ref. 01/01315/OUT was granted in 2007 by the Secretary of State for residential development of land north of Germany Lane for approximately 700 dwellings with associated. In 2013, reserved matters approval ref. 12/00384/REMM was granted on the basis of 650 dwellings. Work has begun to implement the permission with the construction of the highway access. The housing scheme was EIA development and the outline application was accompanied by an ES that was updated for the subsequent reserved matters application. A further ES addendum was submitted with the approval of details application pursuant to condition 10 (Nature Park) ref. AOD/14/00357 granted on 1.4.15. As part of the preparation of the ES various water vole surveys were undertaken, which did not record water vole.

4.3 However, in 2015, water vole were recorded along Germany Beck and a formal survey in 2016 confirmed their presence along the section of the watercourse east of the Germany Lane Meadow Site of Importance for Nature Conservation ("SINC"). Consequently, the developers applied to Natural England for a licence in relation to water voles for the purpose of 'conserving wild animals' under section 16(3)(c) Wildlife and Countryside Act 1981 (as amended). The aim of the licence was to conserve the water vole population by means of displacing water voles from construction working areas and providing new wetland habitat and refuge from flooding. The form, design and timing of provision of the new habitat has been agreed in discussion with Natural England. The location of the water vole habitat is within the Site of Importance for Nature Conservation that was intended to be left as existing as part of the residential scheme.

POLICY CONTEXT

4.4 Section 38(6) of the Planning and Compensation Act 2004 requires that determinations be made in accordance with the development plan unless material considerations indicate otherwise. There is no development plan for York other than the retained policies in the Yorkshire and Humber Regional Spatial Strategy ("RSS") saved under the Regional Strategy for Yorkshire and Humber (Partial Revocation) Order 2013. These policies, YH9(C) and Y1(C1 and C2), relate to York's Green Belt and the key diagram, Figure 6.2, insofar as it illustrates the general extent of the Green Belt extending from the edges of the built up area to 'about 6 miles' from the centre of the City. The policies state that the detailed inner and the rest of the outer boundaries of the Green Belt around York should be defined to protect and enhance

the nationally significant historical and environmental character of York, including its historic setting, views of the Minster and important open areas.

4.5 Central Government guidance is contained in the National Planning Policy Framework ("NPPF", March 2012). Paragraph 7 of the National Planning Policy Framework says planning should contribute to the achievement of sustainable development by balancing its economic, social and environmental roles. Paragraph 14 confirms that for decision-taking, the presumption in favour of sustainable development means that, where the development is absent, silent or relevant policies are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against other policies in the Framework, or unless specific policies in the Framework indicate development should be restricted. The footnote to paragraph 14 contains restrictions where this presumption in favour of sustainable development does not apply, including land designated as Green Belt and locations at risk of flooding. Paragraph 17 lists twelve core planning principles that the Government consider should underpin plan-making and decision-taking, such as protecting Green Belt, taking full account of flood risk, contributing to the conserving and enhancing the natural environment, and conserving heritage assets in a manner appropriate to their significance.

4.6 Although there is no formally adopted local plan, the City of York Draft Local Plan was approved for development control purposes in April 2005. Whilst it does not form part of the statutory development plan for the purposes of S38, its policies are considered to be capable of being material considerations in the determination of planning applications, where policies relevant to the application are in accordance with the NPPF. The relevant policies are summarised in section 2.2 above. The site is shown as lying within York's Green Belt and a non-statutory nature conservation site on the Proposals Map that accompanies the draft 2005 plan.

4.7 At this stage, policies in the 2017 Pre-Publication Draft Local Plan are considered to carry very little weight in the decision making process (in accordance with paragraph 216 of the NPPF), although the evidence base underpinning the work to the emerging plan is capable of being a material planning consideration in the determination of the planning application. The Proposals Map accompanying the 2017 plan includes the site within Green Belt land around York and a SINC.

PRINCIPLE OF DEVELOPMENT

4.8 Whilst the RSS has otherwise been revoked, its York Green Belt policies have been saved together with the key diagram which illustrates the general extent of the Green Belt around York. These policies comprise the S38 Development Plan for York. The policies in the RSS state that the detailed inner boundaries and the rest of the outer boundaries of the Green Belt around York need to be defined to protect and enhance the nationally significant historical and environmental character of York. Whilst the inner boundaries have not yet been finalised at a local level due to

the absence of an adopted local plan, the Secretary of State in granting outline consent for the Germany Beck development concluded that the site was in Green Belt. The application site would remain open following completion of the housing development and would continue to fulfil Green Belt purposes. Both the 2005 draft and emerging local plans include the site of the water vole habitat within the City's Green Belt. In light of the above, the site is considered to be within the general extent of Green Belt.

4.9 The site also lies within Flood Zone 3b (functional floodplain) and therefore can flood.

4.10 In accordance with the footnote to paragraph 14 of the NPPF, the usual presumption in favour of sustainable development established by the NPPF does not apply in Green Belt locations or in locations at risk of flooding. Instead, the more restrictive policies in section 9 and 10 of the NPPF apply.

GREEN BELT POLICY

4.11 Paragraph 88 states that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. All development is considered to be inappropriate in Green Belt, unless it falls within the closed lists contained in paragraphs 89 and 90 of the NPPF.

4.12 Paragraph 79 of the NPPF states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open with the essential characteristics of Green Belts being their openness and permanence. Whilst there is no definition of openness in the NPPF, it is generally taken to be the absence of built development. Paragraph 80 sets out the five purposes of the Green Belt:

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

4.13 The application seeks retrospective consent for engineering operations involved in creating a habitat suitable for water voles. Paragraph 90 of the NPPF includes engineering operations within the closed list of exceptions for 'other forms of development' that are also not inappropriate in Green Belt providing they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.

4.14 The wetland habitat comprises a raised island that is approximately 1.9m maximum height above the existing ground level sitting within an excavated moat of water that is approximately 1.7m maximum depth below the existing ground level. The habitat is landscaped. The habitat is to the south of the Germany Beck watercourse within a larger area of land that is enclosed by boundary vegetation, to the west of an area of excavated compensatory flood storage water bodies and to the east of Fulford Cemetery. As such, the habitat is not out of character in the context within which it sits. It is considered that the engineering works would preserve the openness and purposes of the Green Belt and, as such, is not inappropriate development in the Green Belt.

FLOOD RISK

4.15 The NPPF states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk but, where development is necessary, making it safe without increasing flood risk elsewhere (paragraph 100). This advice is reflected in Draft Local Plan Policy GP15a.

4.16 The site lies within Flood Zone 3b (functional floodplain) and, therefore, comprises land where water has to flow or be stored in times of flood. The works would constitute water-compatible development, which is considered appropriate in Zone 3b in policy terms, providing it has been designed and constructed to:

- remain operational and safe for users in times of flood;
- result in no net loss of floodplain storage;
- not impede water flows and not increase flood risk elsewhere.

4.17 The first provision is not considered to be relevant due to the nature of the development. The habitat has been created through the re-profiling of the land with the excavated moat that is the primary water body compensating for the central raised mound. Therefore, the development would not result in any net loss of storage for flood waters, impede water flows or is likely to increase in flood risk elsewhere. Obviously as the proposal is for a water-compatible development that is appropriate in Flood Zone 3b, the sequential test is irrelevant.

4.18 The Environment Agency, Internal Drainage Board and Council's Flood Risk Engineer raise no objections to the proposal on flood risk grounds. The development is considered to comply with national and local planning policy regarding flood risk.

BIODIVERSITY

4.19 Section 11 'Conserving and enhancing the natural environment' says that the planning system should contribute to and enhance the natural environment by,

amongst other things, minimising impacts on biodiversity and providing net gains in biodiversity where possible as well as preventing adverse affects on pollution and land instability. Draft Local Plan policies NE5a, NE6 and NE7 reflect this advice in relation to conserving non-statutory sites, protected species and habitat creation.

4.20 The site is not a Site of Special Scientific Interest, ancient woodland or a European protected site. It is within a SINC, known as Germany Lane Meadow, which is a non-statutory, local designation. As such, the site has no direct legal protection, but is afforded protection through the planning system. The quality of the habitat within the SINC has declined since its original designation in 1996, probably due to lack of management and flooding events. However, it remains a designated site as old unimproved grassland that is increasingly rare habitat.

4.21 The Council's Ecologist and Countryside Officer has commented that the creation of the wetland habitat has resulted in the loss of some grassland habitat and disturbance to other areas within the SINC through its construction. However, the officer notes that the habitat has been designed to benefit nature conservation and enhance that of water voles specifically which are a protected species and therefore it is considered that the loss of degraded grassland would not have a significant negative impact in the longer term, subject to a condition to secure a SINC specific 20 year management plan. This plan would sit alongside the previous approved Landscape Management Specification for the wider Germany Beck Nature Park.

4.22 Fulford Parish Council highlight the current condition of the new refuge, which they consider unfinished and not constructed in accordance with the submitted plans or as agreed through the Natural England licence process. The applicant has confirmed that the works to create the habitat are complete and are subject to ongoing monitoring as required by the conservation licence. Natural England is the correct authority to monitor compliance with the licence and it is understood that the applicant has met with this body in November 2017 and that no issues were raised regarding compliance.

4.23 The proposal accords with the principles outlined in paragraph 118 of the NPPF that states that development proposals where the primary objective is to conserve or enhance biodiversity are permitted.

ARCHAEOLOGY

4.24 Paragraph 135 requires the effect of an application on the significance of a non-designated heritage asset, such as heritage assets with archaeological interest, to be taken into account in determining an application. Draft Local Plan Policy HE10 reflects national planning guidance.

4.25 The site of the Germany Beck development has been subject to extensive archaeological investigations since 1995 and the outline planning application was

granted by the Secretary of State subject to a condition requiring further archaeological work as part of a Written Scheme of Investigation. A summary of archaeological works to date has been submitted with this application, which makes a brief reference to an archaeological watching brief being undertaken in the area of the water vole habitat. It states that no archaeological features were noted.

4.26 As such, the Council's City Archaeologist raises no objection to the engineering works subject to a condition in the event permission is granted for this full application requiring a report on the archaeological watching brief already undertaken during the engineering operations.

5.0 CONCLUSION

5.1 The application seeks retrospective consent for engineering operations involved in the creation of a water vole habitat within a Site of Importance to Nature Conservation south of Germany Beck to meet the requirements of a conservation licence from Natural England. It is considered not to be EIA Development. The works are not inappropriate development in the Green Belt under paragraph 90 of the NPPF. The works compensate for the impact on existing water vole habitat from development works in the adjacent beck and provide an enhanced habitat. There have been no objections raised from statutory consultees, subject to the imposition of conditions relating to the reporting of the already undertaken archaeological investigations and a SINC specific management plan. The proposal is, therefore, considered to accord with national and local planning policy and is recommended for approval.

6.0 RECOMMENDATION: Approve

1 The development hereby permitted shall be carried out in accordance with the following plans:-

- Persimmon Homes Yorkshire Drawing nos. 600-101 'Site Location Water Vole Sanctuary' and 600-102 'Site Location Water Vole Sanctuary', dated March 2017;
- Met Engineers Ltd Drawing no. 11655/5007-1-182 'Water Vole Sanctuary Cross Sections and Setting Out Information', dated June 2016;
- Quants Environmental Drawing no. 7b:Site Plan 'Germany Meadows', dated 26.1.16, and associated cross sectional drawings 7c: Cross Section - B and 7d: Cross Section - A, dated 25.1.16;

Reason: For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority.

2 An ecological management plan (EMP) for Germany Lane Meadow Site of Importance for Nature Conservation (SINC) shall be submitted to the local planning authority within 3 months of planning permission approval. The content of the EMP shall include the following:

- a) Description and evaluation of features to be managed.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
- g) Details of the body or organization responsible for implementation of the plan.
- h) Ongoing monitoring and remedial measures.

The EMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management bodies responsible for its delivery.

The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the EMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The approved plan will be implemented in accordance with the approved details.

Reason: To ensure the positive long-term management of a Site of Importance for Nature Conservation and habitat for a protected species.

3 A report on the archaeological watching brief of the engineering works that have been carried out shall be submitted to the local planning authority within 3 months of planning permission approval.

Reason: The site is of archaeological interest and it is necessary to record any archaeological deposits and features that may have been revealed as part of the development works.

7.0 INFORMATIVES:

Notes to Applicant

1. STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraphs 186 and 187) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in order to achieve a positive outcome:

- imposition of conditions to address archaeological and ecological matters.

2. Informative:

Under the terms of the Land Drainage Act 1991 and the Internal Drainage Board's Byelaws, the prior written consent of the Board is required for any proposed works or structures in, under over or within 9 metres of the top of the bank of any watercourse.

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