

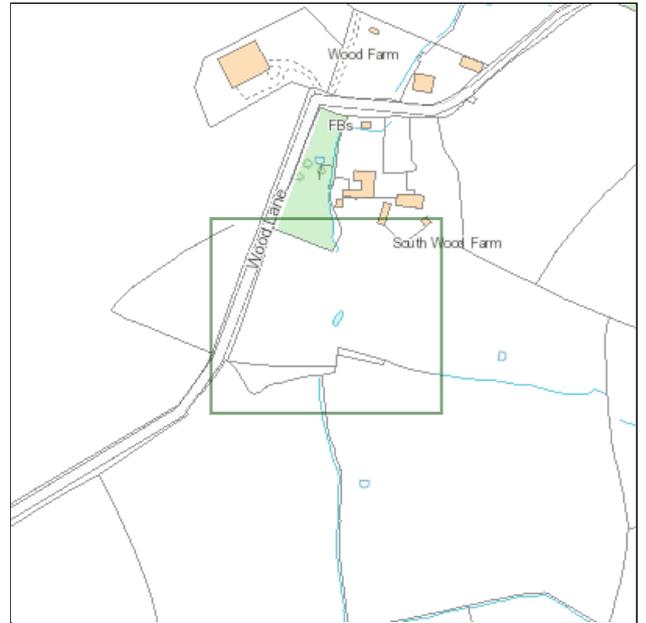
**Ward** Dunkeswell And Otterhead

**Reference** 22/0270/FUL

**Applicant** Dr Clive Potter

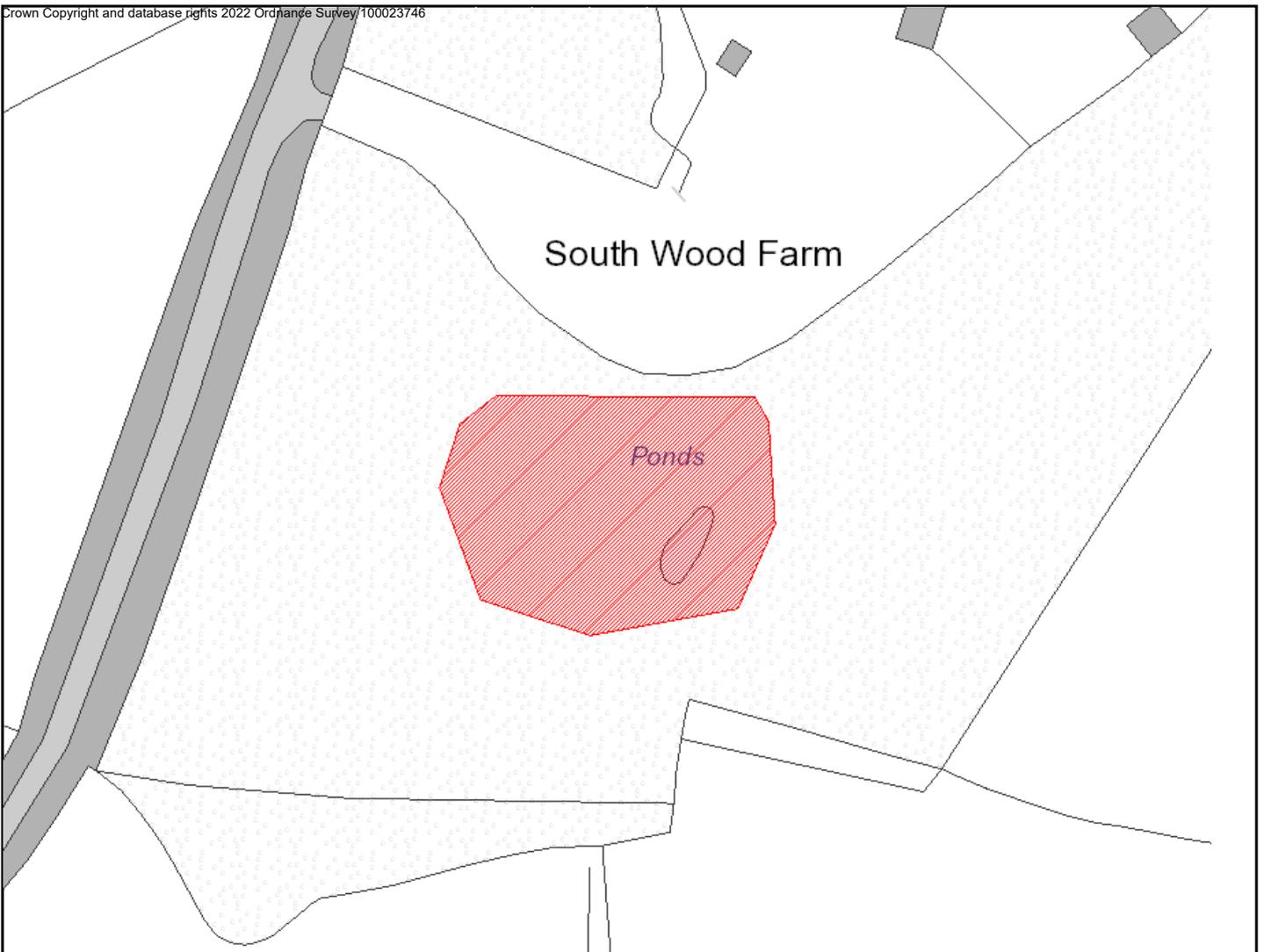
**Location** South Wood Farm Cotleigh Honiton EX14 9HU

**Proposal** Creation of a Wildlife Pond at South Wood Farm.



**RECOMMENDATION: Refusal**

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		<b>Committee Date: 30.09.2022</b>
<b>Dunkeswell And Otterhead (Cotleigh)</b>	<b>22/0270/FUL</b>	<b>Target Date: 21.04.2022</b>
<b>Applicant:</b>	<b>Dr Clive Potter</b>	
<b>Location:</b>	<b>South Wood Farm Cotleigh</b>	
<b>Proposal:</b>	<b>Creation of a Wildlife Pond at South Wood Farm.</b>	

**RECOMMENDATION: REFUSAL**

#### **EXECUTIVE SUMMARY**

**The application is before committee as the recommendation conflicts with the view of a Ward Member.**

**The proposal is the creation of a large wildlife pond on agricultural land with the stated aim of enhancing biodiversity on the farm and assisting with drainage.**

**The site is located to the south of a Grade II\* Listed Building however due to its low level form and separation from that building, the proposed pond is not considered likely to affect that building or its setting. An archaeological investigation undertaken during the course of the determination has demonstrated that no impact on archaeological interests is likely to arise. The proposal is acceptable in terms of its visual impact.**

**The development would involve the destruction of a seasonal pond, the removal of a small number of trees and cut and fill ground engineering works. No concerns have been raised by the Tree officer however the proposed development would involve ground works both on the site of and within 500m of the seasonal pond and it therefore has the potential to harm protected species. Additionally, given that seasonal ponds provide a particular type of aquatic habitat (which does not support fish) and that this habitat may not be replicated or compensated for by the proposed permanent pond, the proposal potentially has a harmful impact on biodiversity. Despite an ecology survey having been requested to address the above concerns and allow a proper evaluation of the ecological impacts of the proposal this has not been provided. Notwithstanding that the proposal is acceptable in all other relevant respects it is considered that the proposal has the potential to cause a net biodiversity loss and harm to protected species in conflict with the requirements of Strategy 47 and Policy EN5 of the East Devon Local Plan. For this reason it is recommended that the application be refused.**

## **CONSULTATIONS**

### **Local Consultations**

#### **Dunkeswell And Otterhead - Cllr David Key**

2/3/22 - I have no objection to the application.

### **Technical Consultations**

#### **EDDC Trees**

28/3/22 - Having reviewed the information supplied with the application I have no arboricultural concerns. There are a number of trees on the site that will likely be impacted by the proposal but it is not considered to be significant.

#### **Conservation**

28/3/22 - The proposal is within the setting of the grade II star listed buildings and listed curtilage buildings. This is an early site, probably earlier than some of the Medieval buildings. This is supported, however, there is a high potential for buried archaeology in this area, as indicated on the Devon Historic Environment Record. It is therefore recommended that the Devon Archaeology team are contacted for comment.

#### **EDDC District Ecologist**

The application needs to be supported by an Ecological Impact Assessment (EclA) report, prepared by a qualified ecologist. The site is within a Great Crested Newt consultation zone, and has the potential to support Great Crested Newts (a European Protected Species) as well as other protected species such as grass snakes and toads (S41 species under the NERC Act 2006). This unmitigated proposal could result in the killing or injury of these species, and destruction of their habitats, with resultant breaches in legislation. The submitted EclA should contain all necessary information required for EDDC to make an informed decision as to the suitability of the proposals, including details of all surveys carried out, and avoidance, mitigation and compensation measures necessary. EDDC cannot determine the application without this information. It is understood that the applicant has refused to supply this information.

Seasonal ponds are a valuable biodiversity feature. The applicant should consider providing a separate permanent pond in addition to the existing seasonal pond, rather than replacing the existing pond, which may be a valuable biodiversity feature. The proposed permanent pond should never be stocked with fish, in order to fulfil its role as a wildlife pond to its maximum potential. The introduction of fish massively reduces the biodiversity value of a pond. EDDC should seek to secure this as a planning condition.

#### **Blackdown Hills AONB Project Partnership**

21/3/22 - I can confirm that the Blackdown Hills AONB Partnership has no observations to make on this planning application.

#### **Historic England**

7/3/22 - Thank you for your letter of 2 March 2022 regarding the above application for planning permission.

Historic England provides advice when our engagement can add most value. In this case we do not consider it necessary to offer advice. This should not be interpreted as comment on the merits of the application. You should seek the views of your specialist conservation and archaeological advisers.

It is not necessary to consult us on this application again, unless there are material changes to the proposals. However, if you would like advice from us, please contact us to explain your request.

#### Devon County Archaeologist

6/4/22 - The proposed wildlife pond occupies a large area in proximity to findspots of iron slag that are indicative of historic iron smelting in this area. An examination of the field to the south of the application area identified fragments of tap and furnace slag, while the bare soil and stones adjacent to the extant pond also contained iron slag. The presence of iron slag across this area indicates the presence of iron furnaces in this vicinity, the iron extraction industry operated on the Blackdown Hills from the early Roman through to the medieval period, though the date or extent of the smelting activity at South Wood Farm is unknown.

The information submitted in support of this application is not sufficient to enable an understanding of the significance of the heritage assets associated with the historic iron extractive industry within the application area or of the impact of the proposed development upon these heritage assets.

Given the high potential for survival and significance of below ground archaeological deposits associated with the historic iron extractive industry on the Blackdown Hills and the absence of sufficient archaeological information, the Historic Environment Team objects to this application. If further information on the impact of the development upon the archaeological resource is not submitted in support of this application then I would recommend the refusal of the application. The requirement for this information is in accordance with East Devon Local Plan Policies EN7 - Proposals Affecting Sites Which May Potentially be of Archaeological Importance - and EN8 - Significance of Heritage Assets and their Setting, and paragraphs 194 and 195 of the National Planning Policy Framework (2021).

The additional information required to be provided by the applicant would be the results of a programme of intrusive field evaluation and documentary research. The results of these investigations will enable the presence and significance of any heritage assets within the proposed development area to be understood as well as the potential impact of the development upon them, and enable an informed and reasonable planning decision to be made by your Authority.

I will be happy to discuss this further with you, the applicant or their agent. The Historic Environment Team can also provide the applicant with advice of the scope of the works required, as well as contact details for archaeological contractors who would be able to undertake this work. Provision of detailed advice to non-householder developers may incur a charge. For further information on the historic

environment and planning, and our charging schedule please refer the applicant to:  
<https://new.devon.gov.uk/historicenvironment/development-management/>.

My ref: Arch/DM/ED/37511c

11/8/22 - I refer to the above application. The Historic Environment Team has now received a copy of the report setting out the results of the archaeological investigations undertaken. This work demonstrated that the archaeological potential of the application area is low. On the basis of these results no further archaeological mitigation is required and I would like to withdraw the Historic Environment Team's previous objection, and instead offer no comments on this planning application.

16/8/22 - Please find attached the report\* sent to and approved by this office - my only comment to the archaeological contractor was that there was a wording missing in the second paragraph.

Hope that is sufficient, if not please let me know.

\*The report is entitled 'Devon County Council Historic Environment Record' and is available in the application documents.

#### Other Representations

None have been received.

#### **PLANNING HISTORY**

Permissions have been granted at the site for agricultural buildings and in relation to the dwelling but none has particular relevance to this proposal.

#### **POLICIES**

##### Adopted East Devon Local Plan 2013-2031 Policies (LP)

Strategy 7 (Development in the Countryside)

Strategy 46 (Landscape Conservation and Enhancement and AONBs)

Strategy 47 (Nature Conservation and Geology)

D1 (Design and Local Distinctiveness)

D2 (Landscape Requirements)

D3 (Trees and Development Sites)

EN5 (Wildlife Habitats and Features)

EN7 (Proposals Affecting Sites which may potentially be of Archaeological Importance)

EN9 (Development Affecting a Designated Heritage Asset)

TC4 (Footpaths, Bridleways and Cycleways)

#### Neighbourhood Plan

There is no draft Neighbourhood Plan available for Cotleigh

#### Government Planning Documents

NPPF (National Planning Policy Framework 2021)

National Planning Practice Guidance

#### Other documents

Blackdown Hills AONB Management Plan 2014-2019

Natural England Standing Advice 'Protected species and development: advice for local planning authorities', available at <https://www.gov.uk/guidance/protected-species-how-to-review-planning-applications>

#### Site Location and Description

The site is in the countryside and is outside of the residential curtilage. It also lies within the Blackdown Hills AONB. The closest dwellings to the site lie to the north of the private access track serving Southwood Farm, the closest being approximately 53 m to the northeast of the site. A Grade II\* Listed Building, the dwelling known as Southwood Farm, lies approximately 65m to the north of the site. Public footpath Cotleigh 14a lies approximately 26m to the south of the site and an unclassified public highway is located to the west of the site approximately 36m away at its closest point.

Ground levels within and immediately around the site slope down to the southeast and east. The site is currently agricultural land which is stated to be unproductive. It is laid to grass and trees are also present. A seasonal pond is stated to be present within the application site and a pond is indicated on the ordnance survey map.

The context of the site is agricultural fields divided by hedges, sparse residential development and agricultural buildings and areas of woodland, particularly beside watercourses.

#### Proposal

The proposal is the creation of a permanent pond outside of the residential curtilage of South Wood Farm. The pond is intended to enhance the biodiversity at the farm and improve drainage. It would not change the use of the land area concerned which is considered to be in agricultural use, albeit the site is stated to be an unproductive area of the farm. For the above reasons the proposed development is considered to be agricultural development, albeit it is ancillary to agricultural production activity.

The pond would be created by cut and fill ground engineering works and there would be no need to import or export materials for those works. It would be largely square in shape and it would measure approximately 23m by 26 m and be up to 1.85 m deep. The pond would be lined with a reinforced geosynthetic liner installed to provide the same permeability as compacted clay. Wetland planting is proposed at the pond's edges. During the course of the determination, in response to the planning

consultation, comments were received from Devon County Council's archaeologist and to address those comments an archaeological report was submitted in support of the application.

## **ANALYSIS**

The main issues for consideration are the principle of the development, heritage impacts, archaeological impact, impact on trees, visual impact and ecological impacts.

### Principle

LP Strategy 7 indicates that development will only be permitted in the countryside where it is specifically supported by local or Neighbourhood Plan Policy. Agricultural development is specifically supported in principle by LP Policy D7 where there is a genuine agricultural need for it. From the submitted details there is no reason to doubt that the proposed pond would be for any purpose other agriculture, notwithstanding that it would not directly relate to agricultural production but is intended to assist drainage and enhance biodiversity at the farm. It is therefore considered that the proposal is supported by LP Policy D7 in principle. The further requirements of this policy and other relevant policies are discussed under the headings below.

### Heritage

Special regard is given to the presence of the Grade II\* listed building 65m to the north of the site and the desirability of preserving that building and its setting. The building and its adjacent garden are physically and visually separate from the application site and the development would not be prominent within the surrounding landscape. Neither Historic England or the conservation officer raise any objection to the proposal in relation to impacts on the Listed Building or its setting and it is therefore not considered that the proposal conflicts with the requirements of LP Policy EN9. The comments of the conservation officer with regard to the potential for buried archaeology were noted and addressed during the course of the application (see details see under 'archaeology' below).

### Archaeology

The comments and initial objection of the County Archaeologist relating to the potential archaeological interest of the site were noted and in response the applicant commissioned an archaeological investigation. The County Archaeologist has been consulted on the findings of that investigation and following that has advised that the archaeological potential of the application area is low and his objection has subsequently been withdrawn. It is therefore not considered that the proposal would conflict with LP Policy EN7.

### Trees

Whilst a small number of trees would be removed as part of the development the tree officer raises no objection to this and it is therefore considered that the proposal complies with LP Policy D3.

### Visual Impact

The creation of the pond would involve relatively low level development which would not be prominent within the wider landscape and would in any case have a natural appearance once areas of disturbed soil become re-vegetated and pond vegetation establishes. Though some trees are proposed to be removed a group of trees would remain close to the site and would be visible alongside the pond from public viewpoints. Where the pond is visible in public views it is likely to be seen as an attractive, natural landscape feature. Taking into account the above it is considered that the AONB landscape would be conserved and enhanced and that the proposal would comply with LP Strategy 46.

### Ecology

The supporting statement indicates that the purpose of the development is to increase biodiversity. Documents accompanying the application state that the site of the proposed pond is not ecologically diverse, that no priority or protected species are present and that no important habitat or biodiversity features would be likely to be affected by the proposals, however no professional ecology survey report has been submitted with the application to support these claims.

Impact on protected species is a material planning consideration and Natural England's standing advice ('Protected species and development; advice for local planning authorities') indicates that a survey (carried out by a suitably qualified ecologist) should be provided whenever a pond or ditch is within 500m of a development and linked to it by semi natural habitat such as a park, even where that pond only holds water for part of the year. That advice also indicates that seasonal ponds are used by protected species such as Great Crested Newt. The quoted 500m distance may reflect the fact that some of the species which use ponds (including protected species) are likely to use surrounding terrestrial habitat at certain times of year.

Impact on biodiversity is also a material planning consideration and whilst it is accepted that man-made ponds can provide wildlife habitat, it is noted that the works to create the proposed permanent pond would destroy a seasonal pond. Information available from the Freshwater Habitats Trust (a UK based charity whose stated aim is to protect freshwater wildlife) indicates that seasonal ponds can support a range of specialised rare plants and animals and that occasional drought gets rid of fish (which are major predators of insects and amphibians) allowing other species to thrive. The Freshwater Habitats Trust also indicate that seasonal ponds are a highly threatened habitat type and recommends against making them into permanent ponds. It is therefore not considered that it can be automatically assumed that the creation of the proposed permanent pond would adequately compensate for any impacts on biodiversity or habitat arising as a result of the destruction of the seasonal pond.

Taking into account both Natural England's standing advice and the information and guidance published by various conservation organisations in relation to ponds and the species likely to use them it is considered that there is a reasonable likelihood that the proposed development could potentially harm protected species and/or biodiversity interests. The agent has been asked to provide an ecologists survey in support of the application, to allow a fully informed decision to be made regarding the impacts of the development in these respects. Despite having been made aware of the Planning

Authority's concerns regarding protected species and the potential value of the seasonal pond the agent contests that the submission of a report is necessary. At the time of writing, a deadline set by the Local Planning Authority for the agent to confirm that a survey would be provided has passed and no such confirmation or survey has been received. In the absence of an ecologist's survey providing an assessment of impacts and details of any necessary mitigation or compensation measures it is not possible for the Local Planning Authority to conclude that no protected species would be harmed as a result of the development and that the creation of a larger permanent pond would provide biodiversity benefits outweighing any biodiversity harm resulting from the destruction of the seasonal pond. The potential net biodiversity loss and harm to protected species conflict with the requirements of LP Strategy 47 and Policy EN5 and weigh against the proposal.

#### Other issues

Given that the proposal is likely to have a minimal visual impact and would not overlap the route of public footpath Cotleigh 14a it is not considered that the proposal would affect the amenity or convenience of use of this right of way and as such that it would comply with LP Policy TC4.

The proposal would not impact on the amenity of nearby residential neighbours.

#### **CONCLUSION**

The proposal would support the operation of the farm without any harmful visual impact or harm to archaeological or heritage interests and it would not cause significant harm to trees. Whilst biodiversity benefits are indicated to be one of the stated aims of the development, the site contains a seasonal pond which may provide a specific type of aquatic habitat and which would be destroyed by the development. In the absence of a professional ecologist's report supporting the proposal it has not been demonstrated that protected species which may be associated with that pond would not be harmed during the construction works or that the development represents a biodiversity gain overall.

#### **RECOMMENDATION**

REFUSE for the following reason:

1. The proposal would involve development in a location where Natural England's standing advice indicates that an ecologist's survey should be provided to inform planning decision-making. The works would destroy a seasonal pond and replace it with a permanent larger pond which is likely to have different characteristics to the seasonal pond which would be destroyed. In the absence of an ecologist's report indicating that the development would have no significant harmful impacts on protected species or on the biodiversity of the site overall it is considered that the proposal has an unacceptable potential harmful impact on protected species and biodiversity which conflicts with the requirements of Strategy 47 Nature Conservation and Geology and Policy EN5 Wildlife Habitats and Features of the East Devon Local Plan.

NOTE FOR APPLICANT

## Informative: Confirmation - No CIL Liability

This Informative confirms that this development is not liable to a CIL charge.

Any queries regarding CIL, please telephone 01395 571585 or email [cil@eastdevon.gov.uk](mailto:cil@eastdevon.gov.uk).

### Informative:

In accordance with the requirements of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 in determining this application, East Devon District Council has worked proactively and positively with the applicant to attempt to resolve the planning concerns the Council has with the application. However, the applicant was unable to satisfy the key policy tests in the submission and as such the application has been refused.

### Plans relating to this application:

	Location Plan	24.02.22
517-P-002	Sections	24.02.22
	Proposed Site Plan	24.02.22

### List of Background Papers

Application file, consultations and policy documents referred to in the report.