

Item No.	Application No. and Parish	Statutory Target Date	Proposal, Location, Applicant
(3)	21/01835/FUL Sulhamstead	22.09.2021 <sup>1</sup>	Erection of four incidental Koi Ponds to be used in conjunction with the establish Koi Carp Business at Jackaways Cottage, removal of unauthorised fence.  Jackaways Cottage, White House Green, Sulhamstead, Reading, West Berkshire, RG7 4EB  Dominic Taylor / The Pond People

<sup>1</sup> Extension of time agreed with applicant until 28.01.2022

The application can be viewed on the Council's website at the following link:  
<http://planning.westberks.gov.uk/rpp/index.asp?caseref=21/01835/FUL>

**Recommendation Summary:** Delegate to the Service Director of Development and Regulation to grant conditional planning permission.

**Ward Member:** Councillor Ross Mackinnon

**Reason for Committee Determination:** Called-in by local ward member at the Parish Council request as development appears to exceed existing permissions.

**Committee Site Visit:** 19<sup>th</sup> January 2022

#### Contact Officer Details

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## 1. Introduction

- 1.1 This application seeks planning permission for the erection of four Koi Ponds to be used for purposes incidental to the residential use of Jackaways Cottage, but also in conjunction with the established Koi Carp Business at Jackaways Cottage. The proposal also includes the removal of an unauthorised fence.
- 1.2 The site comprises of a semi-detached white rendered grade II listed period property known as Jackaways Cottage. The cottage is situated to the east of an irregular shaped plot. The site is in Sulhamstead, outside of any defined settlement boundary and therefore within the open countryside for the purposes of planning policies. There is a timber and brick outbuilding erected to the south-west of the site which is used for the sale of Koi Carp.
- 1.3 Access to Jackaways Cottage is via Jaques Lane which serves several houses. A public footpath (SULH/6/1) runs through the site to the east of the dwelling.
- 1.4 Three neighbouring dwellings are situated to the north of the site. The site is screened by mature planting to the south-western boundary adjacent to Folly Lane. The site is surrounded by open countryside and farmland.
- 1.5 The application seeks planning permission for the retention and completion of four partially constructed show ponds. The Koi carp will live in these four ponds. The ponds measure between 0.5m to 1m above ground level (to their maximum point, because much of the enclosures are below this) and are proposed to be finished in facing brick to match the adjacent 'Koi House'.
- 1.6 In addition to the already constructed elements the ponds will be finished with wooden pergolas (to a maximum height of 2.1 metres) that help to prevent the fish being harmed by birds. As such, the pergolas are a vital element of the proposal providing much needed security from predatory birds. The ponds will also include modest water features faced with limestone, together with associated decorative planting.
- 1.7 The show ponds will primarily be a place for the fish to live until they are sold but will also serve as a place for prospective purchasers to view them by appointment.
- 1.8 The site benefits from planning permission for business use for Koi Carp trading.

## 2. Planning History

- 2.1 The table below outlines the relevant planning history of the application site.

Application	Proposal	Decision / Date
17/01926/COND2	Application for approval of details reserved by Conditions 11 - Waste water drainage method statement, of planning permission (allowed on appeal) 15/02681/FUL.	Approved 06.09.2017
17/00975/COND1	Application for approval of details reserved by conditions (6) spoil, (7) lighting scheme, (8) Scheme for protection of trees, (10) details of the signs and (11)	Split 29.06.2017

	waste water drainage method statement of planning permission Allowed on Appeal 15/02681/FUL	
15/02681/FUL	Koi house: outbuilding for the sale of Koi carp and supplies.	Refused 25.01.2016 then allowed on appeal APP/W0340/W/16/3146768.

2.2 The original permission was for a Koi house which was an outbuilding used for the sale of Koi carp and supplies. This application was considered by the Council's Eastern Area Planning Committee on 20<sup>th</sup> January 2016. Members resolved to refuse the application on two reasons:-

- a) The proposed building is too high and bulky for this sensitive location. Would be too prominent and inappropriate in appearance and would have an unacceptable impact on the amenity of the occupants of nearby dwellings and of walkers using the footpath that runs across the site.
- b) The proposed use is unsustainable as it would have a negative social and environmental impact and would bring no economic benefit to the local rural economy.

2.3 The Council's decision to refuse planning permission was subsequently appealed. The Planning Inspector reviewed the case under appeal APP/W0340/W/16/3146768 and concluded that Koi House would not be visually at odds with its setting in the garden of a listed building and was satisfied that the proposal would enhance the character and appearance of this sensitive area rather than harm or detract from it. The Inspector also concluded that the location of the site away from public transport modes is outweighed by its low key nature and the support in favour of business and enterprise development. Thus, the Planning Inspector granted permission with conditions. The applicant later applied to discharge the conditions under applications 17/00975/COND1 and 17/01926/COND2.

### 3. Procedural Matters

3.1 **EIA:** Given the nature and scale of this householder development, it is not considered to fall within the description of any development listed in Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. As such, EIA screening is not required.

3.2 **Publicity:** A two site notice was displayed at the entrance to Jackways Cottage on 13.08.2021 for 21 days. The expiry of these site notices was on 03.09.2021. The application was also advertise in the Reading Chronicle on 12.08.2021 and the expiry was 26.08.2021.

3.3 A re-consultation was undertaken because Local Planning Authority received amended plans and proposal description. A further 14 days re-consultation was undertaken with additional 3 days due to the bank holidays within the re-consultation period. Another two site notices were displayed at the entrance to Jackways Cottage on 13.08.2021 and the notices expired on 03.01.2022. Also, consultees and those who made representations on the original proposal where contacted on 13.12.2021 and given 14 days to comment on the amendments. This consultation expired on the 27.12.2021. The application was also advertise in the Reading Chronicle on 23.12.2021 and the expiry was 09.01.2022.

- 3.4 **CIL:** Community Infrastructure Levy (CIL) is, a levy charged on most new development to pay for new infrastructure required as a result of the new development. CIL will be charged on residential (C3 and C4) and retail (A1 - A5) development at a rate per square metre based on Gross Internal Area. Given the proposed use, the initial assessment is that the development would be zero rated as no new floor space is proposed. However, CIL liability will be formally confirmed by the CIL Charging Authority under separate cover following the grant of any permission.

## 4. Consultation

### *Statutory and non-statutory consultation*

- 4.1 The table below summarises the consultation responses received during the consideration of the application. The full responses may be viewed with the application documents on the Council's website, using the link at the start of this report.

<p><b>Sulhamstead Parish Council:</b></p>	<p>Objection:</p> <ol style="list-style-type: none"> <li>1. The construction of the four large ponds has completely changed the site since the original planning application was granted for the Koi House (Application No 15/02681/FUL). The original building was described by the Planning Inspector who carried out the planning appeal, as a “modest and attractive building which is of an appropriate scale for the domestic curtilage of the listed building”. The Parish Council agree with that description. However, it is the view of the Parish Council that the site is no longer a “modest’ construction, but a substantial development on a commercial scale, and bears no resemblance to the proposed site in the original planning application. The four ponds and the pergolas are constructions of a significant size, and totally out of keeping with the rural setting.</li> <li>2. The Planning inspector also commented that the “modest” building would be shielded from view by the mature trees and hedging on the eastern boundary. The trees and hedging were removed by the landowner shortly after planning permission was granted, and replaced by an urban style low level fence and hedging. The site is therefore now exposed to the rural scene. As it stands at the moment, the original building blends quite well into the area, but the construction of the ponds and pergolas will change the nature of the area completely, will be easily seen from beyond the site and will impact significantly on the rural environment.</li> <li>3. In the planning statement, the ponds are described as “essential” to the running of the business. The Parish Council would like to understand why they were not therefore included in the original planning application? It would appear that no one was aware of the four ponds (including the Planning Inspector), until they were constructed earlier this year.</li> </ol>
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	<ol style="list-style-type: none"><li>4. The comments made by the Planning Inspector are quoted widely in the planning statement. However, it should be noted that the Planning Inspector was commenting on the application for the original building, and was not commenting on the construction of the four ponds as they formed no part of the original application under consideration at Appeal. So any comments made by the Planning Inspector and quoted in the Planning Statement for the ponds are totally out of context and irrelevant.</li><li>5. The Parish Council note that the application also includes the construction of a pergola above each pool. This will only serve to make them even more obtrusive and out of keeping in a rural setting within the curtilage of a listed building. They will also impact heavily on the other two properties on the boundary of the site. The Parish Council understands that no resident has a right to a view, but the impact of the koi carp development now has a significant impact on the entire area and has changed the rural scene completely.</li><li>6. The Planning Statement implies that the public footpath is to be moved. As the Ramblers Association have already pointed out, this has not yet been agreed and is by no means a foregone conclusion. However, it should also be noted that the landowner has already moved the path once, without consent. Actions have also been taken to make it extremely difficult to identify where the path is now located. Entrance to the path is obstructed by gates and vehicles, and signage has been relocated so that it is difficult to see.</li><li>7. The Planning Statement also implies that the site is up and running as a business, which is not the case as the original building is not yet complete.</li><li>8. Reference is made to supporting small businesses in a rural community, and the Parish Council actively supports such a view. However, it is difficult to see how this business will benefit the community. There are no employees and the business serves a very niche market which will not contribute to the local economy. This point was also made when commenting on the original planning application.</li><li>9. There are serious concerns with regard to the disposal of any contaminated water. The planning application says that they will make use of an existing water course. The Parish Council is not aware of any existing water course. The three cottages on the site all take their water from an artesian well, and make use of individual septic tanks. Any water discharge would need to be managed extremely sensitively to ensure no groundwater contamination.</li></ol>
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<b>Highway Authority (WBC):</b>	<p>No objection: The main highway consideration for this proposal is vehicle movements and car parking.</p> <p>Paragraph 3.3 of the Planning Statement states:</p> <p>The site benefits from planning permission for business use for Koi Carp trading and the provision of additional ponds will not increase the intensification of that use, nor will the existing footfall to site be increased.</p> <p>Paragraphs 6.11 and 6.12 state:</p> <p>As is explained above, the Koi Carp trading business is existing and the proposed ponds would be ancillary to that use. There would be no additional visitors or intensification of the use and as such the impact upon neighbours would be the same as has already been accepted.</p> <p>The ponds would have no impact upon the highway network; ample parking is available on site to sufficiently cater for the proposed number of visitors (by booking/appointment only). The ponds do not result in any intensification to the use which is already approved.</p> <p>Given this, I would raise no highway objections.</p> <p>Informative are requested on any planning approval which may be given.</p>
<b>Trees (WBC):</b>	No comments
<b>Local Lead Flood Authority (WBC):</b>	No objection if conditions accepted. There shall be no discharge into sewers, watercourses or other waterbodies during and post construction. The applicant shall ensure that no overland flow occurs as result of the works approved under this application.
<b>Archaeological Officer (WBC):</b>	<p>No objection: Thank you for the consultation on a largely retrospective proposal to construct four ponds in the garden of a Grade II listed building of 17th century origins. On balance I don't think an archaeological condition would have been required but if the ponds are already dug any features would unfortunately have already been disturbed. Should the applicant have uncovered any significant artefacts of more than 300 years old, I would request that these be reported to the Finds Liaison Officer who holds regular surgeries at West Berkshire Museum.</p> <p>The other aspect is whether these above ground structures will have an impact on the listed building - this is a matter for Conservation advice (I note that Historic England were consulted but they do not usually need to be notified about plan apps for Grade II buildings).</p>
<b>Conservation Officer (WBC):</b>	31.12.2021: Re-consultation dated 13 December 2021 (Proposal description has changed to erection of four incidental Koi Ponds to be used in conjunction with the establish Koi Carp Business at Jackaways Cottage, removal of unauthorised fence. Updated Location Plan, Proposed Block Plan and "Proposed Plans,

	<p>Elevation and Site Section". A statement from the applicant has also be provided).</p> <p>This additional information does not strictly alter my original comments made (attached for ease of reference). My comments seek to restrict themselves to the building conservation aspects of the proposals, although there may be other Development Control Case Officer considerations to take into account, e.g. a potential intensification of (a business) use of the site, although the submitted application states that this will not be the case. The conditions attached to approved application 15/02681/FUL controlling the use of this part of the site therefore remain relevant and should be appropriately repeated (there also being concerns raised in consultation about non-compliance with conditions attached to application 15/02681/FUL).</p> <p><u>19.08.2021</u>: This application follows on from application 15/02681/FUL allowed on appeal, where the existing koi carp house was judged by the Inspector not to have a detrimental impact on the setting of the Grade II listed Jackaways Cottage given its separation from it. Given that the now proposed fish ponds are much more modest structures and will be finished in appropriate materials, and effectively in a separate fenced compound dividing the listed building curtilage, I believe it would be difficult to argue material further impact on the setting of the listed building (as advised to Enforcement, notwithstanding any other planning issues). The fencing (vintage unknown) should however be subject of a formal (retrospective) application for planning consent, possibly as part of the current application, because the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is not permitted development under Class A, Part 2, Schedule 2 of the Town &amp; Country Planning (General Permitted Development) (England) Order 2015 if it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building, and therefore requires a formal application for Planning Consent (but not Listed Building Consent (LBC) as the listed building is not directly affected).</p> <p>The foregoing comments seek to restrict themselves to the building conservation aspects of the proposals, although there may be other Development Control Case Officer considerations to take into account, e.g. a potential intensification of (a business) use of the site, although the submitted application states that this will not be the case. The conditions attached to approved application 15/02681/FUL controlling the use of this part of the site therefore remain relevant and should be appropriately repeated.</p>
<p><b>Rights of Way (WBC):</b></p>	<p>I have no objection to the actual ponds etc. but am duty bound to point out that the legal line of public footpath Sulhamstead 6 has been blocked by fencing, and also that the car parking area means that cars are parked on the public footpath. Removal of a fence will help, although note the fence in relation to where the public footpath leaves the south-west corner of the car parking area (as mentioned in attached comments, the car park is not</p>

	<p>where it was proposed in the 2015 planning application that was approved on appeal).</p> <p>Note that the line representing the public footpath on the final attachment only represents the centreline.</p> <p>We have an application in to divert the public footpath but we have many other such discretionary cases, as well as many other statutory duties so this is not on our priority list and no decision has been made on whether to make an order. There have been objections to the diversion proposal during informal consultations, and if an order is made, any objections will mean that we would have to abandon the matter or submit it to the Planning Inspectorate for determination, with no guarantee of success.</p> <p>The existing legal line of the public footpath should be kept open and clear at all times.</p>
<b>West Berks Ramblers:</b>	<p>Objection: Mid Berks Ramblers have concerns about this application. Public Right of Way Sulhamstead / 6 passes through the area being developed in this application. While a diversion to that right of way is under consideration, it has not been agreed or approved, contrary to the implication in the application.</p> <p>We believe that the future of the right of way should be resolved before this application is considered.</p>
<b>Natural England:</b>	No comment
<b>Historic England:</b>	No comment
<b>Thames Water Utilities:</b>	No comments received.
<b>Economic Development (WBC):</b>	<p>The principle of a Koi carp trading business has been established on this site with the existing koi house which contains internal ponds. As the use has been established and the business is actively trading, it should be viewed as an established small rural business.</p> <p>Under West Berkshire Council Core Strategy CS10 proposals to diversify the rural economy should be encouraged, and it makes provision specifically that the Council should encourage the retention of small rural businesses and support start-ups. This purpose should therefore carry weight under policy CS10 because, as established in the applicant's personal statement, these additional ponds are necessary for the proper functioning and viability of the business.</p> <p>Notwithstanding the other significant considerations, such as wastewater, the development should be acceptable in principle as a necessary aspect of a rural start-up.</p>

	In regards to any wider positive local economic impacts from the development, there is no evidence that it would contribute to employment or the vitality of local settlements.
<b>Environmental Health (WBC):</b>	On behalf of Environmental Health I confirm that I have no concerns regarding the above application.
<b>Ecology (WBC):</b>	No comments received.
<b>Emergency Planning (WBC):</b>	No adverse comments from Emergency Planning, application outside Burghfield DEPZ.
<b>Office For Nuclear Regulation:</b>	No comment

### ***Public representations***

4.2 Representations have been received from 7 contributors, all of which object to the proposal. The full responses may be viewed with the application documents on the Council's website, using the link at the start of this report. In summary, the following issues/points have been raised:

- Ponds too large for this site
- Contamination and concerns that water can be disposed of safely.
- Non-Compliance with conditions of previous planning approval.
- Retrospective application.
- Continues breaches in planning control
- Harmful to the setting of the listed building and curtilage
- Parking area looks different to original plans
- Footpath has been obstructed.
- There are already two ponds within the building
- Harmful to the rural character and appearance of the area.
- Applicant has removed mature vegetation.
- Block Plan does not include all of the access.

## **5. Planning Policy**

5.1 Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The following policies of the statutory development plan are relevant to the consideration of this application.

- Policies ADPP1, ADPP6, CS10, CS13, CS14, CS16, CS17, CS18, and CS19 of the West Berkshire Core Strategy 2006-2026 (WBCS).
- Policies C1, C6 and P1 of the Housing Site Allocations Development Plan Document 2006-2026 (HSA DPD).
- Policies TRANS 1, OVS5 and OVS6 of the West Berkshire District Local Plan 1991-2006 (Saved Policies 2007).

5.2 The following material considerations are relevant to the consideration of this application:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- WBC Quality Design SPD (2006)
- Planning Obligations SPD (2015)

## 6. Appraisal

6.1 The main issues for consideration in this application are:

- Principle of development and rural economy
- Character and appearance
- Heritage impacts
- Intensification of use
- Effect on neighbouring amenity
- Effect on highways
- Effect on public rights of ways
- Effect of drainage and flooding
- Effect on tree and ecology
- Unauthorised development

### *Principle of development*

- 6.2 The most important policies for determining whether the principle of development is acceptable are Policies ADPP1, ADPP6 and CS10 of the Core Strategy, and Policy C6 of the Housing Site Allocations DPD. The Core Strategy includes a Spatial Strategy (ADPP1 and ADPP6) that provides a broad indication of the overall scale of development in the district, applying the principles of sustainable development, and based on defined spatial areas and a settlement hierarchy. Policy CS10 relates to the rural economy, and Policy C6 relates to domestic extensions.
- 6.3 Under policy ADPP1 it is found that most development will be within or adjacent to the settlements included in the settlement hierarchy. This policy finds in the open countryside only appropriate limited development in the countryside will be allowed, focused on addressing identified needs and maintaining a strong rural economy.
- 6.4 The application is located within the East Kennet Valley, the name given to the rural south-east of the district that lies east of Thatcham and outside of the AONB. Policy ADPP6 is the spatial strategy for the East Kennet Valley. According to the policy, the character of all the settlements in this area will be conserved and enhanced by ensuring that any development responds positively to the local context. Development in the open countryside will be strictly controlled.
- 6.5 Policy CS10 relates to the rural economy. Policy CS10 finds proposals to diversify the rural economy will be encouraged, particularly where they are located in or adjacent to Rural Service Centres and Service Villages. Existing small and medium sized enterprises within the rural areas will be supported in order to provide local job opportunities and maintain the vitality of smaller rural settlements. Proposals seeking the loss of such existing sites and premises must demonstrate that the proposal does not negatively impact upon the local economy, and the vitality and viability of the surrounding rural area.
- 6.6 Regard has also been given to Policy C6 which sets out criteria for extensions to existing dwellings that qualify as an exception in Policy C1. It states there is a presumption in favour of proposals for the extension of existing permanent dwellings. An extension or alteration will be permitted providing that:

- a) the scale of the enlargement is subservient to the original dwelling and is designed to be in character with the existing dwelling; and
  - b) it has no adverse impact on: the setting, the space occupied within the plot boundary, on local rural character, the historic interest of the building and its setting within the wider landscape; and
  - c) the use of materials is appropriate within the local architectural context; and
  - d) there is no significant harm on the living conditions currently enjoyed by residents of neighbouring properties.
- 6.7 The use of the site has been established by the previous application 15/02681/FUL which was granted planning permission on appeal. The Inspector applied the following condition:
- 4) The outbuilding hereby approved shall be used as a Koi carp sales and consultancy business only, or for purposes incidental to the residential use of the dwelling currently known as Jackaways Cottage, and shall not be used for any other business or commercial use. The development shall be operated by the occupiers of the Jackaways Cottage only, not be used as a separate commercial or business unit, nor shall the new building hereby approved be sold, let, rented or otherwise separately occupied, or disposed of from the host dwelling, and no separate curtilage shall be created.*
- 6.8 In effect the previous decision has therefore permitted a specific commercial enterprise (Koi carp sales and consultancy business) to take place on the land, but the enterprise is tied by the permission to a business operated by the occupants of the associated house, akin to a live/work unit. In this respect regard should be given to Policy CS10 (rural economy). Alternatively the building can be used for purposes incidental the residential use of the house, and in this respect due regard has been given to Policy C6 (domestic extensions).
- 6.9 The application relates specifically to the erection of four ponds. Some work has started on some of these ponds, and so this application is partially retrospective. There has been a personal statement from the applicant and professional planning statement which indicates the ponds are needed in relation to the business and the ponds will improve the living conditions for the Koi Carp. It has been declared in the planning statement and personal statement that the new Koi ponds would not represent any intensification of the business. Rather they are a practical necessity for the processing and showing of specimens that have passed quarantine checks. This is the only practical way applicant can guarantee the Koi are bio-secure and the welfare of collectors' stocks.
- 6.10 It is considered the addition of the ponds would support the established business on the site. While the site is not located in or adjacent to any rural service centre or service village, the ponds further facilitate the onsite business which is helping to diversify the rural economy. It is considered the proposal does attract support from Policy CS10 in this respect.
- 6.11 If the site is no longer used for business purposes, it is considered that the scale of the development is such that it would be subservient to Jackaways Cottage, as a series of ponds is not fundamentally out of character in a domestic setting. It is considered that the proposal is in accordance with Policy C6 in this respect.
- 6.12 It is considered that the proposed development would conserve the character and appearance of the adjacent Grade II Listed building and the surrounding rural area. It is considered the scale of the development appropriate and securing the removal of the

fence through a planning condition will improve the openness of the site. The removed of the fence will also mean the legal line of the foot path is no longer obstructed. It is considered the proposed is appropriate limited development in the countryside and is therefore compliant with ADPP1 and ADPP6 of West Berkshire Core Strategy 2006-2026.

- 6.13 Overall, it is considered that there is a presumption in favour of the proposed development providing there are no adverse impacts that would outweigh the benefits, when assessed against the policies in this Local Development Plan taken as a whole.

### ***Intensification of use***

- 6.14 Within the planning statement and personal statement it is indicated that the provision of additional ponds will not increase the intensification of that use, nor will the existing footfall to site be increased. While, there is an increase in ponds it is put forward that this will not necessarily translate into more people attending the site. The applicant is still restricted by conditions on the original application which includes opening hours. The ponds are required so the new Koi ponds are required to keep healthy fish separate from newly imported fish under quarantine. Extra ponds for healthy specimens ready for sale are a necessary requirement for the functioning of the business. It is considered the addition of the four ponds will not lead to an over intensification of the land.

### ***Character and appearance***

- 6.15 Policy CS14 states that new development must demonstrate high quality and sustainable design that respects and enhances the character and appearance of the area, and makes a positive contribution to the quality of life in West Berkshire.
- 6.16 Policy CS19 states that development should ensure diversity and local distinctiveness of the landscape character of the District is conserved and enhanced, the natural, cultural, and functional components of its character will be considered as a whole. Having regard to the sensitivity of the area to change and ensuring that new development is appropriate in terms of location, scale and design in the context of the existing settlement form, pattern and character.
- 6.17 Jackaways Cottage has a large residential curtilage, and it is considered the scale of the proposed ponds can be accommodated within the setting of this residential curtilage. Neighbouring dwellings are situated to the north. The site is screened from the views within the surrounding open countryside via mature planting.
- 6.18 The four ponds are located close to the Koi Carp outbuilding and it is considered that this is an acceptable location for the four ponds.
- 6.19 The four ponds would be seen by users of the public footpath which crosses the site and it would be within the historical curtilage of the listed buildings and would form part of its setting. It is considered the four ponds would assimilate with the established domestic garden of the surroundings. It is considered the ponds would not look out of place to footpath users. It is considered they would not appear dissimilar to a hard landscaped residential garden.
- 6.20 The proposed materials are considered to be in keeping with the local area and reflective of the Koi Carp outbuilding.
- 6.21 The removal of the unauthorised fence would assist in restoring the open nature of the site. There are conditions on original permission to prevent the subdivision of the curtilage as this was seen to be harmful to the character and appearance area and to the setting of Jackaways Cottage.

6.22 It is considered the proposal would be appropriate in terms of location, scale and design in the context of the existing settlement form, pattern and character. It is considered the proposal is compliant with policies CS14 and CS19 of West Berkshire Core Strategy 2006-2026.

### ***Heritage assets***

6.23 The Conservation Officer recognises that this application follows on from application 15/02681/FUL allowed on appeal, where the existing Koi carp house was judged by the Inspector not to have a detrimental impact on the setting of the Grade II listed Jackaways Cottage given its separation from it.

6.24 Given that the now proposed fish ponds are much more modest structures and will be finished in appropriate materials, and effectively in a separate fenced compound dividing the listed building curtilage, it is considered to be difficult to argue material further impact on the setting of the listed building.

6.25 The Inspector judged that Koi Carp outbuilding's presence would not be visually at odds with its setting in the garden of a listed building and they were satisfied that the proposal would enhance the character and appearance of this sensitive area rather than harm or detract from it.

6.26 As the Koi Carp outbuilding was considered to be an enhancement to the character and appearance of the sensitive area by the Planning Inspector, the Planning Officer agrees with the Conservation Officer that it would be difficult to argue material further impact on the setting of the listed building.

6.27 The fencing that has been erected is unauthorised and requires planning permission. This is because the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is not permitted development under Class A, Part 2, Schedule 2 of the Town & Country Planning (General Permitted Development) (England) Order 2015 if it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building, and therefore requires a formal application for Planning Consent (but not Listed Building Consent (LBC) as the listed building is not directly affected). The unauthorised fence is to be removed as part of this application and this will be secured by condition. Its removal will have a positive impact on the site's openness, although this should not be regarded as a benefit in the planning balance because it would remedy a breach of planning control.

6.28 It is considered the proposal would not have a material harmful effect on the setting of the listed building. It is considered the proposal is compliant with Policy CS19 with respect to the historic environment.

### ***Neighbouring amenity***

6.29 According to Policy CS14, new development must demonstrate high quality and sustainable design that makes a positive contribution to the quality of life in West Berkshire. Paragraph 127 of the NPPF states planning decisions should ensure that developments create places with a high standard of amenity for existing and future users.

6.30 Consequently, all development should be designed in a way to avoid any unacceptable harm to neighbouring living conditions. Applications will typically be assessed in terms of any significant loss of light, overlooking of neighbouring buildings or land, and whether the proposal would result in any undue sense of enclosure, overbearing impact, or harmful loss of outlook to neighbouring properties.

- 6.31 The closest dwelling to the proposed ponds would be approximately 25m away. It is considered that the proposal is sufficient distance away from neighbouring properties so as not to give rise to amenity issues, such as loss of privacy, overlooking, over shadowing or loss of natural light.
- 6.32 Objections have been raised in regards to noise. Environmental Health have been consulted with regards to this matter and have raised no concerns. The original permission has conditions which controls the timing of customers visiting the site. This condition of the original permission means visits should not take place at unsocial times. The Inspector granted the use on the basis of its low key nature, and it is not considered that the proposal would significantly intensify this use. It is considered the proposal will the give raise to unaccepted noise levels which would be martially harmful to neighbouring amenity.
- 6.33 Taking the above matters into account, it is considered the proposal will not have a materially harmful impact on neighbouring amenity. The proposal is considered comply with policy CS14 of the West Berkshire Core Strategy 2006-2026 and OVS5 of the West Berkshire Local Plan Saved Policies 2007.

### ***Highways***

- 6.34 Policy CS13 of the Core Strategy concerns transport. It emphasises that road safety in West Berkshire is a key consideration for all development. Particular focus should be given to the safety of pedestrians, cyclists, and other vulnerable road users.
- 6.35 The Highways Officer was consulted on this application and they had no objections to the proposal for the erection of four ponds and removal of the fence. It is considered these additions will not bring additional footfall to the site.
- 6.36 It is noted by officers that car parking area has been constructed in a slightly different position to the approved plans of the previous permission. It is therefore necessary to agree a revised car parking layout under this application. A condition is proposed accordingly.
- 6.37 It is considered the proposal will not have a material impact on highways. It is considered the proposal is compliant with CS13 of West Berkshire Core Strategy (2006-2026), and TRANS.1 West Berkshire District Local Plan 1991-2006 (Saved Policies 2007) and policy P1 of Housing Site Allocations Development Plan Document.

### ***Public rights of ways***

- 6.38 Policy CS18 states that District's green infrastructure will be protected and enhanced. Developments resulting in the loss of green infrastructure or harm to its use or enjoyment by the public will not be permitted. Where exceptionally it is agreed that an area of green infrastructure can be lost a new one of equal or greater size and standard will be required to be provided in an accessible location close by.
- 6.39 There is a footpath, Sulhamstead 6/1, which runs through the site. The Council's Right of Way Officer advised they have no objection to the actual proposed ponds, but has highlighted that the legal line of public footpath 6/1 has been blocked by fencing, and also that the car parking area means that cars are parked on the public footpath. They recognised in principle that the removal of the fence under the terms of this application would assist in resolving this matter.
- 6.40 The four proposed ponds would not obstruct the public footpath, and this application would secure the removal of the unauthorised fence that is obstructing the footpath. It would be necessary to agree a revised parking area that serves the dwelling and

business in a way that does not obstruct the legal route of the public footpath, and a condition is proposed accordingly.

- 6.41 It has been raised in an objection letter that this application, if approved, would footpath 6/1. It should be noted that this is not the case as diverting a public footpath has to be done through the submission of an application under the Highways Act 1980. Therefore, diverting a footpath is outside the legal framework of the planning application.
- 6.42 It is considered that the proposal will be compliant with policy CS18.

### ***Drainage and Flooding***

- 6.43 The site is located within Flood Zone 1, which indicates a low risk of fluvial (river) flooding. It is also not within any critical drainage area identified by the Strategic Flood Risk Assessment for the district. As minor development, a Flood Risk Assessment (FRA) is not required by Policy CS16, and there are no objections to the development on grounds of flood risk.
- 6.44 Notwithstanding the absence of any flood risk objections, Policy CS16 states that on all development sites, surface water will be managed in a sustainable manner through the implementation of Sustainable Drainage Methods (SuDS) in accordance with best practice and the proposed national standards and to provide attenuation to greenfield run-off rates and volumes, for all new development and re-development and provide other benefits where possible such as water quality, biodiversity and amenity. The Council has adopted a Sustainable Drainage SPD which supports this policy, and provides examples of measures that can be incorporated into even minor developments.
- 6.45 In addition, public representations have raised concerns in regards to drainage and disposal of the water from within the ponds.
- 6.46 The Local Lead Flood Authority has reviewed the case and considers that drainage matters can be adequately dealt with by conditions.

### ***Tree and Ecology***

- 6.47 Whilst no comments have been received from the Council's ecologist or tree officers, it is considered that the nature and location of the development is such that the proposed development would not materially harm any nearby trees and would not have a materially harmful impact on ecology. It is considered the proposed scheme is compliant with CS17 of the West Berkshire Core Strategy (2006-2026).

### ***Unauthorised development***

- 6.48 A number of objections have been raised in relation to unauthorised development on the site. It is also recognised that some of the supplied information may be contradictory to the original permission. The decision on this application must relate solely to planning considerations relating to the proposed development of the four ponds. Accordingly the proposal has been assessed on its individual planning merits.
- 6.49 The decision maker must approach a retrospective application seeking to legitimise a development that has already taken place in exactly the same way as a 'normal' application for proposed development. Therefore, unauthorised development itself cannot be weighted in the planning balance.

## 7. Planning Balance and Conclusion

- 7.1 In conclusion, an in-depth consideration has been given to a range of planning matters and it is considered that the proposed development is compliant with the National Planning Policy Framework, Policies ADPP1, ADPP6, CS10, CS13, CS14, CS16, CS17, CS18, and CS19 of the West Berkshire Core Strategy (2006-2026), Policies C1 and P1 of Housing Site Allocations Development Plan Document adopted May 2017, Policies TRANS 1, OVS5 and OVS6 of West Berkshire District Local Plan 1991-2006 (Saved Policies 2007) and Supplementary Planning Document Quality Design (June 2006). Therefore, it is recommended that this application is approved.

## 8. Full Recommendation

- 8.1 To delegate to the Head of Development and Planning to GRANT PLANNING PERMISSION subject to the conditions listed below.

### **Conditions**

1. **Commencement of development**

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

2. **Approved plans**

The development hereby permitted shall be carried out in accordance with the approved plans and documents listed below:

- Amended Location Plan drawing number 2119c 100 received 03.12.2021;
- Amended Block Plan drawing number 2119c 101 received 13.12.2021;
- Amended Proposed plan, elevation & site sections drawing number 2119c 103 received 03.12.2021;
- Roof Plan drawing number 2119 104 received 09.07.2021;
- Cross sections / elevations drawing number 2119 105 received 28.07.2021.

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

3. **Materials (as specified / to match)**

The materials to be used in the development hereby permitted shall be as specified on the plans and the application forms. Where stated that materials shall match the existing, those materials shall match those on the existing development in colour, size and texture.

Reason: To ensure that the external materials respect the character and appearance of the area. This condition is applied in accordance with the National Planning Policy Framework, Policies CS14 and CS19 of the West Berkshire Core Strategy (2006-2026), and Supplementary Planning Document Quality Design (June 2006).

4. **Hours of work (construction/demolition)**

No demolition or construction works shall take place outside the following hours, unless otherwise agreed in writing by the Local Planning Authority:

8:30am to 6:00pm Mondays to Fridays;  
9:00am to 1:00pm Saturdays;

No work shall be carried out at any time on Sundays or Bank Holidays.

Reason: To safeguard the amenities of adjoining land uses and occupiers. This condition is applied in accordance with the National Planning Policy Framework, and Policy CS14 of the West Berkshire Core Strategy 2006-2026.

5. **Drainage**

There shall be no discharge into sewers, watercourses or other waterbodies during and post construction. The applicant shall ensure that no overland flow occurs as result of the works approved under this application, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that surface water will be managed in a sustainable manner. This condition is imposed in accordance with the National Planning Policy Framework, Policy CS16 of the West Berkshire Core Strategy (2006-2026), Part 4 of Supplementary Planning Document Quality Design (June 2006), Sustainable Drainage SPD (2008).

6. **Ponds use**

The four ponds hereby approved, as detailed on the Amended Block Plan drawing number 2119c 101 (received 13.12.2021), shall be used as a Koi carp sales and consultancy business only, or for purposes incidental to the residential use of the dwelling currently known as Jackaways Cottage, and shall not be used for any other business or commercial use. The development shall be operated by the occupiers of the Jackaways Cottage only, not be used as a separate commercial or business unit, nor shall the new building hereby approved be sold, let, rented or otherwise separately occupied, or disposed of from the host dwelling, and no separate curtilage shall be created.

Reason: The creation of a separate planning unit would conflict with the strategy for the location of new development, and be unacceptable in the interests of ensuring a sustainable pattern of development. This condition is applied in accordance with the National Planning Policy Framework, Policies ADPP1, ADPP6 and CS1 of the West Berkshire Core Strategy 2006-2026, and Policy C1 of the Housing Site Allocations DPD 2006-2026.

7. **Removal of fence**

The four ponds hereby permitted shall not be brought into first use until the fences shown on the Amended Block Plan drawing number 2119c 101 received 13.12.2021 have been removed.

Reason: The retention of the unauthorised fence would have a negative impact on listed building and the character of site. The fence is currently obstructing a public right of way which is considered to be harmful to user of the footpath. This condition is applied in accordance with the National Planning Policy Framework, Policies ADPP1, ADPP6 and CS14, CS18 and CS19 of the West Berkshire Core Strategy 2006-2026, and Policy C1 of the Housing Site Allocations DPD 2006-2026.

8. **Parking and turning**

The four ponds hereby permitted shall not be brought into first use until vehicle parking and turning spaces for the dwelling and Koi carp sales and consultancy business (including any surfacing arrangements and marking out) have been completed in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority. Thereafter the parking and turning spaces shall be kept available for parking and manoeuvring (of private cars and/or private light goods vehicles) at all times.

Reason: To ensure the development is provided with adequate parking facilities, in order to reduce the likelihood of roadside parking that would adversely affect road safety and the flow of traffic. This condition is applied in accordance with the National Planning Policy Framework, Policy CS13 of the West Berkshire Core Strategy 2006-2026, and Policy P1 of the Housing Site Allocations DPD 2006-2026.

### ***Informatives***

1. **Damage to footways, cycleways and verges**

The attention of the applicant is drawn to the Berkshire Act, 1986, Part II, Clause 9, which enables the Highway Authority to recover the costs of repairing damage to the footway, cycleway or grass verge, arising during building operations.

2. **Damage to the carriageway**

The attention of the applicant is drawn to the Highways Act, 1980, which enables the Highway Authority to recover expenses due to extraordinary traffic.

3. **Tree protection precautions**

- To ensure that the trees, which are to be retained, are protected from damage, ensure that all works occur in a direction away from the trees.
- In addition that no materials are stored within close proximity i.e. underneath the canopy of trees to be retained.
- Ensure that all mixing of materials that could be harmful to tree roots is done well away from trees (outside the canopy drip line) and downhill of the trees if on a slope, to avoid contamination of the soil.
- To ensure the above, erect chestnut pale fencing on a scaffold framework at least out to the canopy extent to preserve rooting areas from compaction, chemicals or other unnatural substances washing into the soil.
- If this is not possible due to working room / access requirements The ground under the trees' canopies on the side of construction / access should be covered by 7.5cm of woodchip or a compressible material such as sharp sand, and covered with plywood sheets / scaffold boards to prevent compaction of the soil and roots. This could be underlain by a non permeable membrane to prevent lime based products / chemicals entering the soil
- If there are any existing roots in situ and the excavation is not to be immediately filled in, then they should be covered by loose soil or dry Hessian sacking to prevent desiccation or frost damage. If required, the minimum amount of root could be cut back to using a sharp knife.
- If lime based products are to be used for strip foundations then any roots found should be protected by a non permeable membrane prior to the laying of concrete.