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For the attention of Ms. Claire Potts

PDW/17123

08 December 2017

Dear Sirs

LAND AT EASTERGATE FRUIT FARM BARNHAM ROAD EASTERGATE (LA REF EG/71/14/OUT) – PROPOSAL TO VARY PLANNING CONDITION 12 UNDER SECTION 73 OF THE T&CPA 1990 (AS AMENDED BY THE PLANNING & COMPULSORY PURCHASE ACT 2004)

On behalf of our client Linden Homes (South), we apply herewith, under Section 73 of the 1990 Act (as amended by the 2004 Planning and Compulsory Purchase Act) to vary the wording of condition 12 of the outline planning consent EG/71/14/OUT simply to allow the preparation and submission of required Ecological Reports to the Council for approval prior to **the commencement of development** rather than at Reserved Matters stage. As Linden Homes has already advised you in an email of 4 December, the Reserved Matters application is already in preparation and this will be submitted to you in January 2018 in order to deliver the 60 dwellings permitted at outline stage. The alternative would be that the outline permission lapses and the dwellings are lost altogether, seriously undermining an already significant 5 year land supply shortfall.

The application is accompanied by the requisite fee of £195.00, planning form, landownership Certificate B, a letter from the Ecology Consultant that carried out the original Surveys and a location plan showing the application site edged red at 1:2500 scale (at A3). Article 4C of the General Development Procedure Order provides exemption from the need to provide a Planning Design and Access Statement and instead this letter provides sufficient information to identify the relevant condition and planning justification for its variation.

The Original Planning Permission

The application site was first identified for residential development in the Barnham & Eastergate Neighbourhood Plan which was 'made' or brought into force in July 2014. An outline planning application was submitted in August 2014 and registered under LA Ref EG/71/14/OUT. In accordance with the



Neighbourhood Plan allocation it provided for 60 dwellings (42 open market units and 18 affordable), open space, community orchard and new access.

Of relevance to this Section 73 application, it was accompanied by an Ecological Summary Report of Hankinson Duckett Associates comprising:

- Bat Survey Report
- Dormouse Survey Report
- Badger Survey Report
- Reptile Survey Report
- Invertebrate Survey Report
- Orchard Survey Report
- Ecological Appraisal (including a desk study and extended Phase1 habitat survey)

Outline consent was granted on February 3rd 2015. To avoid the permission expiring, an application for the submission of Reserved Matters is required within 3 years, i.e. by February 3rd 2018.

Planning Condition 12 Proposed for Variation

Condition 12 was included to ensure all the ecological survey information set out above was kept up to date. In the event of any delay of greater than 24 months between the date of the submission of a Reserved Matters application and the date of the ecological surveys submitted in support of the application, it required an updated survey report be prepared to accompany the Reserved Matters application.

The purpose of this application is therefore to seek permission to vary the wording of **condition 12** simply to allow any survey update prior to the commencement of development rather than at the submission of Reserved Matters. There will be no prejudice to the ecological and biodiversity interest on the site as the requirement for updated surveys can bite in a pre-commencement condition in the usual way.

Condition 12 of the consent states that:

'The plans and particulars submitted in support of the reserved matters application shall include the following ecological details:

- **a Construction Environmental Management Plan incorporating the avoidance and mitigation recommendations set out in Eastergate Ecological Summary report by Hankinson Duckett Associates, dated August 2014, ref 2136.9**
- **a detailed lighting plan showing measures to be used to avoid illumination of boundary habitats, and proposed areas of open space, in order to avoid disturbance to bats (showing modelled areas of light spill and predicted lux levels);**
- **full details of the outlined enhancements recommended in the above ecological report and shown on the Ecological Proposals drwg ref 2136.9/1, fig 8, dated July 2014; and**
- **a management plan to ensure the long-term viability of new and existing habitats.**

No development shall proceed until the above details have been approved by the local planning authority and then only in strict accordance with them. If there is a delay of greater

than 24 months between the submission of a reserved matters application and the date of the ecological surveys submitted in support of this application, an updated survey report shall be submitted to support the reserved matters application.

Reason: To ensure that the proposals avoid adverse impacts on protected and priority species and contribute to a net gain in biodiversity, in accordance with 109 and 118 of the NPPF.

New Proposed Condition 12

Paragraphs 203 and 206 of the National Planning Policy Framework (NPPF) recognise that unacceptable development can always be made acceptable through the use of conditions or planning obligations. Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

In our view, the wording of condition 12 requiring ecological survey information is kept up to date is entirely acceptable and serves a necessary planning purpose. However we disagree with the requirement that it should be secured at the time of the submission of a Reserved Matters application. In our view, this is neither necessary nor reasonable.

We have reviewed the use of similar conditions imposed for the same purpose by other Local Planning Authorities and Bracknell Forest Council has used different wording to good effect in their own decisions. What we therefore propose in this Section 73 application is the addition of the following revised wording based on the Bracknell Forest model condition. This should replace in full the last paragraph in condition 12 above. The revised paragraph is as follows:

‘No development shall proceed until the above details have been approved by the local planning authority and then only in strict accordance with them. No development within any phase shall commence if more than 2 years has elapsed between the previous protected species surveys (relating only to roosting bats, badgers, reptiles and dormice) and the date on which development within the phase is commenced, unless an updated protected species survey has been carried out by a suitably qualified ecologist and a report confirming the results and implications of the assessment, including any revised mitigation measures, has been submitted to and approved in writing by the Local Planning Authority. The revised mitigation measures shall be implemented and performed.

Reason: To ensure the status of protected species on site has not changed since the last survey.

The new wording causes no prejudice to biodiversity interest on the site as it still prevents the commencement of development without an updated survey where more than 2 years has elapsed since original surveys were carried out. However in this case, the new wording is a pre requisite to allow the submission of our Reserved Matters application out of survey season next January.

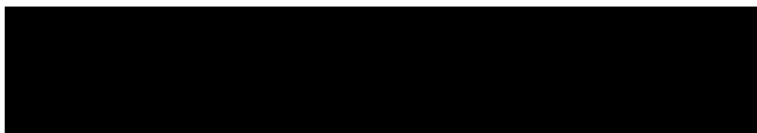
We also attach a letter from the ecologist who carried the original surveys on the site. The letter dated 7 December 2017 refers to this Section 73 application and the Reserved Matters application in preparation. The letter confirms that the new proposed wording for condition 12 is appropriate as the existing habitat has

not changed to a significant degree since the original surveys were carried out. It also confirms that further surveys will need to be carried out as a matter of course in advance of development commencing in any event. As mentioned earlier, rather than at Reserved Matters stage these could be secured in a standard pre commencement condition instead.

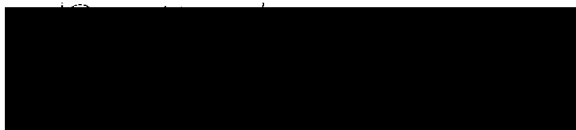
For all the above reasons we trust that the application to vary the wording of **Condition 12** can be granted planning approval on the grounds sought. In the meantime we look forward to receiving an acknowledgement of receipt at your earliest convenience.

Yours faithfully

for Genesis Town Planning Ltd



Paul D White BA (Hons) DipTP MRTPI
Director of Planning



CC Linden Homes South