

Planning Department,
Arun District Council,
Maltravers Road,
Littlehampton,
West Sussex,
BN17 5LF

8th July 2019

Dear Sirs,

Town and Country Planning Act 1990

Application for Non-Material Amendment to Condition 13 of planning application ref: WA/44/17/OUT.

Land East of Tye Lane, Walberton

Please find enclosed an application for a Non-Material Amendment in connection with the above site.

Planning Permission was granted (LPA ref: WA/44/17/OUT) dated 8th 23rd February 2018 for the development of the above site, subject to 43no planning conditions. This application is made pursuant to Section 96a of the Town and Country Planning Act 1990 and relates to the Planning Permission Condition 13 which relates to the ecological management and mitigation plan.

Forming part of this application please find enclosed the following documentation:-

1. A copy of the planning application proforma duly completed and signed;
2. A cheque for £234 made payable to Arun District Council to cover the relevant application fee will follow under separate cover.

Procedure for making changes to the conditions:

Section 96A of the Town and Country Planning Act allows Local Planning Authorities to make non-material changes to Planning Permission, which the legislation states:

S.96a - Power to make non-material changes to planning permission

(1)A local planning authority in England may make a change to any planning permission relating to land in their area if they are satisfied that the change is not material.

(2)In deciding whether a change is material, a local planning authority must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission as originally granted.

(3)The power conferred by subsection (1) includes power—

(a)to impose new conditions;

(b)to remove or alter existing conditions." (my emphasis)

As highlighted in the extract this includes powers for existing conditions to be altered.

Background:

The site benefits from Planning Permission (LPA ref: WA/44/17/OUT). The description of development comprises:

"Outline application with some matters reserved for up to 175 dwellings, new vehicular access, together with associated car parking, landscaping & community facilities to include allotments, play space & community orchard. This application

is a Departure from the Development Plan & may affect the character & appearance of the Walberton Village Conservation Area."

An application for the Approval of Reserved Matters was submitted and approved in March 2019 (LPA reference WA/95/18/RES). Following the approval of the detailed layout and the discharge of the outline planning conditions, the purpose of this application is to seek a Non-Material Amendment to amendment Condition 13 to reflect the proposals as approved.

Condition 13

Condition 13 of the outline planning permission relates to the provision of an ecological management and mitigation plan for the development. The condition reads as follows;

Prior to the commencement of construction works or any preparatory works detailed Ecological Management and Mitigation Plan including a Schedule of Works shall be submitted to the LPA for approval and will be based on the recommendations within the supporting Preliminary Ecological Appraisal Report, and the Bat and Reptile Survey Report (September 2017). All approved details shall then be implemented in full and in accordance with the agreed timings and details.

The Ecological Management and Mitigation Plan shall include but not be restricted to:

- **timings for clearance of trees or scrub to avoid impacts on breeding birds**
- **two phased cutting of grassland along site boundaries to deter reptiles and amphibians**
- **details of compensatory and additional tree planting**
- **details of compensatory boundary habitat planting**
- **details and location of bird and bat boxes, log piles around the site boundaries**
- **creation of at least three wildlife ponds**
- **boundary features to measure at least 5m width for the majority of the site to allow for commuting badgers**
- **measures to minimise the disturbance of badgers**

Should the detailed layout of the site require the removal of further trees which have the potential to support bats, a climbed tree inspection survey will be required.

The Ecological Technical Note submitted with RM application confirmed that no further survey work in relation to any protected species including water vole, bats, birds, invertebrates and reptiles is considered necessary as surveys undertaken in 2016 and 2017 identified no constraints to development in respect of these species. Reptiles, roosting bats and water vole were not recorded on site and a fairly typical assemblage of invertebrates and birds were considered to be utilising the boundary habitats of the site, which have been largely retained.

An EMMP was submitted to the Council based on the Ecological Technical Note and discussions with the Council's Ecologist. The EMMP was approved by the Council in July 2019 however there is a minor conflict with the wording of condition 13 which states that 'at least 3 wildlife ponds' were to be provided. At the time of the RM application, the Council's Ecologist, Liz Rogers, stated that she only required 1no wildlife pond to be

incorporated into the scheme. The approved scheme includes the provision of 2 ponds as part of the overall drainage, open space and biodiversity elements of the development.

In terms of ecology, as the great crested newt (GCN) surveys completed confirmed that all surveyed ponds surrounding the Site returned negative results for great crested newt, there is no requirement for mitigation or compensation (for any potential loss of terrestrial habitat on-site), such as through the creation of new ponds.

If GCN were present, in terms of licensing requirements from Natural England, the provision of 3 ponds would be considered to be significant and not a minimum requirement. Therefore, the provision of 2 wildlife ponds provides substantial ecological enhancements for a site of this size, which will offer new habitat for a range of wildlife, including amphibians, bats, reptiles and invertebrates.

On this basis, the purpose of the application is to amend the wording of the condition to reflect the scheme which was considered acceptable by the Council. Whilst the final wording is a matter for the LPA, I would suggest the following wording;

Amended Condition 13 wording;

Prior to the commencement of construction works or any preparatory works detailed Ecological Management and Mitigation Plan including a Schedule of Works shall be submitted to the LPA for approval and will be based on the recommendations within the supporting Preliminary Ecological Appraisal Report, and the Bat and Reptile Survey Report (September 2017). All approved details shall then be implemented in full and in accordance with the agreed timings and details.

The Ecological Management and Mitigation Plan shall include but not be restricted to:

- **timings for clearance of trees or scrub to avoid impacts on breeding birds**
- **two phased cutting of grassland along site boundaries to deter reptiles and amphibians**
- **details of compensatory and additional tree planting**
- **details of compensatory boundary habitat planting**
- **details and location of bird and bat boxes, log piles around the site boundaries**
- **creation of ~~at least three~~ wildlife ponds**
- **boundary features to measure at least 5m width for the majority of the site to allow for commuting badgers**
- **measures to minimise the disturbance of badgers**

Should the detailed layout of the site require the removal of further trees which have the potential to support bats, a climbed tree inspection survey will be required.

Planning Considerations:

In terms of the considerations associated with this application, the following should be noted;

1. The changes would not materially change the development that has been granted Planning Permission.

Linden Homes South
1A Guildford Business Park
Guildford
Surrey
GU2 8XC

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2. The revised wording not go to the heart of the Planning Permission granted. The proposed amendment to the wording does not affect the basis which supported the application on which the decision was made.
 3. The layout which was approved was considered to be acceptable in ecological terms both through the Approval of Reserved Matters and the discharge of condition 13.
 4. The change to the condition does not alter the scheme as approved.
 5. The Council's Ecologist was happy with the ecological enhancements that the scheme provided and did not consider 3no ponds were necessary.
 6. Whilst it is the discretion of Council who to consult on this application, there are no changes to the permission which would affect any third parties i.e. neighbouring properties.

In summary, the proposed amendment of Condition 13 to amend the wording in relation to the ecological ponds does not substantially alter or change the approved development, nor the evidence base which supported the original application.

I trust that the enclosed provides you with sufficient information to validate the application and progress towards determination. Should you have any queries please contact me at the above address.

Yours faithfully,



Laura Humphries

Senior Planning Manager

For and on behalf of Linden Homes South