

Application Number: 16/11098 Variation / Removal of Condition

Site: POND 1, EAST ROAD, MARCHWOOD INDUSTRIAL PARK,
MARCHWOOD SO40 4BY

Development: Variation of Condition 5 of Planning Permission 12/99485 to allow
landscaping in stages

Applicant: Associated British Ports

Target Date: 28/09/2016

1 REASON FOR COMMITTEE CONSIDERATION

Contrary to Parish Council View

2 DEVELOPMENT PLAN AND OTHER CONSTRAINTS

Built-up area

3 DEVELOPMENT PLAN, OBJECTIVES AND POLICIES**Core Strategy****Objectives**

- 1. Special qualities, local distinctiveness and a high quality living environment
- 4. Economy
- 8. Biodiversity and landscape

Policies

- CS2: Design quality
- CS3: Protecting and enhancing our special environment (Heritage and Nature Conservation)
- CS4: Energy and resource use
- CS6: Flood risk
- CS17: Employment and economic development
- CS24: Transport considerations

Local Plan Part 2 Sites and Development Management Development Plan Document

- DM2: Nature conservation, biodiversity and geodiversity
- DM5: Contaminated land
- MAR5: Marchwood Industrial Park

4 RELEVANT LEGISLATION AND GOVERNMENT ADVICE

- Section 38 Development Plan
- Planning and Compulsory Purchase Act 2004
- National Planning Policy Framework

5 RELEVANT SUPPLEMENTARY PLANNING GUIDANCE AND DOCUMENTS

None

6 RELEVANT PLANNING HISTORY

- 6.1 Flexible employment uses B1(b) & (c), B2 & B8 including open storage; associated parking; landscaping on partially infilled pond (12/99485) - granted 19/2/13
- 6.2 Variation of condition 4 of pPlanning PErmission 12/99450 to allow landscaping in stages. Item 3ee on this Agenda.

7 PARISH / TOWN COUNCIL COMMENTS

Marchwood Parish Council: recommend refusal - the applicants have given no reason to delay implementation of the full landscape scheme; the scheme is to help ecology of the site after the pond was filled in; the landscaping also acts as a buffer between the industrial park and the residential properties adjacent to the site.

8 COUNCILLOR COMMENTS

None

9 CONSULTEE COMMENTS

- 9.1 Environmental Health (contaminated land):- No concerns

10 REPRESENTATIONS RECEIVED

None

11 CRIME & DISORDER IMPLICATIONS

No relevant considerations

12 LOCAL FINANCE CONSIDERATIONS

Local financial considerations are not material to the decision on this application

13 WORKING WITH THE APPLICANT/AGENT

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council take a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome.

This is achieved by

- Strongly encouraging those proposing development to use the very thorough pre application advice service the Council provides.
- Working together with applicants/agents to ensure planning applications are registered as expeditiously as possible.

- Advising agents/applicants early on in the processing of an application (through the release of a Parish Briefing Note) as to the key issues relevant to the application.
- Updating applicants/agents of issues that arise in the processing of their applications through the availability of comments received on the web or by direct contact when relevant.
- Working together with applicants/agents to closely manage the planning application process to allow an opportunity to negotiate and accept amendments on applications (particularly those that best support the Core Strategy Objectives) when this can be done without compromising government performance requirements.
- Advising applicants/agents as soon as possible as to concerns that cannot be dealt with during the processing of an application allowing for a timely withdrawal and re-submission or decision based on the scheme as originally submitted if this is what the applicant/agent requires.
- When necessary discussing with applicants/agents proposed conditions especially those that would restrict the use of commercial properties or land when this can be done without compromising government performance requirements.

In this case, there have been discussions with the applicants and their agent since the application was submitted, which has resulted in the submission of additional information that has enabled a positive recommendation to be made.

14 ASSESSMENT

14.1 In February 2013, planning permission was given for the partial infill of a large pond at Marchwood Industrial Estate. Roughly at the same time the Local Planning Authority also granted separate outline planning permission for industrial and storage development on the pond infill areas under planning permission 12/99485. That permission was subject to a number of conditions, some of which were similar to those imposed on planning permission 12/99450.

14.2 Condition 5 of Planning permission 12/99485 states that:-

"The landscape proposals approved under planning permission 12/99450 (Sue Sutherland Landscape Architects Drawings No CS-561.03 Rev C and CS-561.04 Rev C) shall be implemented in full before any development (including use of the land for open storage) is carried out pursuant to this planning permission."

The stated reason for this condition was:-

"To ensure that the loss of much of the existing pond area is adequately mitigated by appropriate new landscaping and to comply with Policy MA-2 of the New Forest District Local Plan First Alteration and Policy CS2 of the Core Strategy for New Forest District outside the National Park."

14.3 It is important to note that the planning permissions for the pond infill and its subsequent redevelopment for employment purposes were granted on the basis that the scheme would maintain ecological interests as well as deliver specific landscape enhancements around the retained pond and along some of the boundaries of the industrial estate. Without such mitigation, the loss of the large pond area would not have been accepted.

- 14.4 Planning permission 12/99450 has now been implemented. The large pond has been infilled in accordance with the planning permission leaving a much smaller pond. The majority of the approved landscape works have also been implemented. However, a section of approved landscaping to the west side of the pond, covering an area that is approximately 10 metres wide and 140 metres in width has not been implemented. The applicants are now keen to implement the employment development approved under planning permission 12/99485, but cannot lawfully do so whilst elements of the approved landscaping remain incomplete. The applicants advise that they are currently unable to implement the remaining landscaping, and therefore to enable development to proceed on the pond infill area before all of the landscaping has been implemented, they have submitted this application to vary the aforementioned condition 5. They have also submitted a separate related application to vary condition 4 of Planning permission 12/99450. The proposed variation of condition would enable development to take place on most of the pond infill area before the remaining landscaping is implemented, but would require the outstanding landscaping to be completed by 19th February 2021 at the very latest, or earlier if development is commenced pursuant to this planning permission on an area of land known as Plot L6.
- 14.5 Initially, the application had only a limited level of supporting information to justify the proposed delay in planting (which appears to be why the Parish Council have raised an objection). However, the applicant's agent has since provided a clearer justification for the delay in planting. Specifically, it is indicated that the applicants (ABP) are prevented from implementing the unfinished landscaping by an extant lease which they inherited when they bought the site. The lease grants a right of access across the strip of land that is required to be landscaped. The lease is due to expire in 2020, at which time it is indicated that ABP will be able to implement the remaining landscaping and rearrange access to adjacent parts of the site to avoid any future conflict with the landscape strip and its ongoing management.
- 14.6 The applicant's agent also points out that the strip of land that has still to be landscaped forms just 8.5% of the total area of enhanced landscaping that is required to be provided under planning permission 12/99450. The applicant's agent feels that all of the most critical elements of landscaping have been implemented, and goes on to suggest that the area that remains to be landscaped is a less essential and less significant part of the overall enhanced landscape proposals than those elements which have already been undertaken. It is further indicated that the ability to bring forward the significant employment development proposals permitted under planning permission 12/99485 will be compromised if condition 5 cannot be varied.
- 14.7 Delaying the implementation of an area of approved landscaping is considered to be regrettable, and is something that should not be approved without good reason. In this case, the landscaping cannot be implemented due to a lease. In itself, a lease should not be accepted as a justification to delay the implementation of important landscape works. However, at the same time, it is clear that the lease is an impediment to implementation of the outstanding landscape works, and in so doing it also impedes the pond infill areas fulfilling their full economic potential. The area where landscaping remains to be implemented was integral to the justification for the pond infill. However, it is accepted that it is not the

most critical element of the overall landscape package, being not so strongly related to the new pond and not so publicly visible as other areas of landscaping. Furthermore, it is only a relatively small element of the overall area of landscaping that is required to be provided. Therefore, it is an area where delayed planting will not be as harmful as in some other areas, noting that there is already a narrow landscaped margin on this boundary. In these circumstances, and given the constraints imposed by the lease, given also that it is not desirable to hinder economic development on this major employment site, and given that one can be reasonably confident that the landscaping will still be implemented by February 2021, it is felt there would be an adequate justification to vary condition 5 of planning permission 12/99485. The applicants have put forward a very specific wording for the varied condition, which it is felt should be adjusted to be more precise, but which will achieve the change that the applicants are looking for.

- 14.8 Overall, the proposed development would not be wholly consistent with Local Plan policies and objectives, at least in the short-term. However, there is considered to be a reasonable justification to permit the proposed variation of condition, and in the longer-term the proposal would still deliver the full landscape benefits that would ensure the proposal is fully consistent with policy. It should be noted that there is a need to reapply many conditions from the previous outline planning permission, as any permission would effectively constitute a new outline planning permission.
- 14.9 In coming to this recommendation, consideration has been given to the rights set out in Article 8 (Right to respect for private and family life) and Article 1 of the First Protocol (Right to peaceful enjoyment of possessions) of the European Convention on Human Rights. Whilst it is recognised that there may be an interference with these rights and the rights of other third parties, such interference has to be balanced with the like rights of the applicant to develop the land in the way proposed. In this case it is considered that the protection of the rights and freedoms of the applicant outweigh any possible interference that may result to any third party.

15. RECOMMENDATION

GRANT the VARIATION of CONDITION

Proposed Conditions:

1. Approval of the details of the layout (including the layout of all new distribution roads), the scale, the appearance, and the landscaping ("the reserved matters") of the development shall be obtained from the Local Planning Authority for the specific area of the application site where development is proposed to take place before any development is commenced on that specific area. The development shall only be carried out in accordance with the details which have been approved.

Reason: To comply with Section 92 of the Town and Country Planning Act 1990.

2. Application for approval of the reserved matters shall be made to the local planning authority by no later than 18th February 2021 (the expiration of eight years from the date of outline planning permission 12/99485).

Reason: To comply with Section 92 of the Town and Country Planning Act 1990.

3. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the 'reserved matters' to be approved, i.e. by 18th February 2023.

Reason: To comply with Section 92 of the Town and Country Planning Act 1990.

4. The green shaded and blue hatched areas on drawings 962-LM-04C and 962-LM-05D, (or their equivalent), shall be reserved for soft landscape planting (including pedestrian access to the adjacent pond).

Reason: To ensure the provision of appropriate areas of soft landscaping, to mitigate the visual impact of the development site and to secure development of an appropriate design quality in accordance with Policies CS2 of the Core Strategy for New Forest District outside the National Park, and Policy MAR5 of the Local Plan Part 2: Sites and Development Management.

5. The landscape proposals approved under planning permission 12/99450 (Drawings No CS-561.03 rev D and CS-561.04 rev C) shall be implemented in accordance with the Landscape Phasing Plan (Drawing No 962-LP-01-A), such that:-

- a) the landscape proposals on the area shown in green on that plan shall have been implemented in full before any development (including use of the land for open storage) is carried out on the areas of pond infill approved under planning permission 12/99450.
- b) the landscape proposals on the area shown in yellow on that plan shall be implemented in full prior to the commencement of development pursuant to this planning permission on Plot L6 as shown on the Landscape Phasing Plan (Drawing No 962-LP-01-A), or prior to 19th February 2021, whichever occurs sooner.

Reason: To ensure that the loss of much of the existing pond area is adequately mitigated by appropriate new landscaping and to comply with Policy CS2 of the Core Strategy for New Forest District outside the National Park and Policy MAR5 of the Local Plan Part 2: Sites and Development Management.

6. A biodiversity and landscape management / maintenance plan for the retained pond and area of enhanced landscaping (the land outlined in blue on drawing 962-LM-01B) shall be submitted to and approved by the Local Planning Authority before any development (including use of the land for open storage) is carried out pursuant to this planning permission. The area

of enhanced landscaping and retained pond shall thereafter be permanently retained, managed and maintained in full accordance with both the approved drawings and the approved management and maintenance plan.

Reason: To provide appropriate landscape and ecological mitigation for the loss of much of the existing pond area, and to comply with Policy CS2 of the Core Strategy for New Forest District outside the National Park and Policy MAR5 of the Local Plan Part 2: Sites and Development Management.

7. Written documentary evidence demonstrating that any non-shell and core building which has a gross internal floorspace of in excess of 1000 square metres has achieved at minimum a rating of 'Good' against the BREEAM standard and any shell and core building which has a gross internal floorspace of in excess of 1000 square metres has achieved at minimum a rating of 'Pass' against the BREEAM standard shall be submitted to the Local Planning Authority and verified in writing prior to the first occupation of that building, unless an otherwise agreed time frame is agreed in writing by the Local Planning Authority. The evidence shall take the form of a post construction certificate as issued by a qualified BREEAM certification body. In addition, for any shell and core development of in excess of 1000 square metres, details of the measures that will be implemented to encourage tenants to follow the recommendations of the Green Fit-Out Guide shall be submitted to and approved by the Local Planning Authority before that building is 'fitted out'.

Reason: To meet energy efficiency design objectives, having regard to the requirement of Policy CS4 of the Core Strategy for the New Forest District outside the National Park.

8. The development hereby approved shall be carried out in accordance with the approved Flood Risk Assessment (FRA) dated 9th November 2012 and the following mitigation measure detailed within the FRA:-

- a) Finished floor levels shall be set no lower than 3.75m above Ordnance Datum (AOD).

The mitigation measure shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed in writing by the Local Planning Authority.

Reason: To reduce the risk of flooding to the proposed development and future occupants and to comply with Policy CS6 of the Core Strategy for New Forest District outside the National Park.

9. No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an assessment of the impact of surface water discharge on the biodiversity interest of the retained ponds, and if required, appropriate mitigation to ensure the biodiversity of the retained ponds is not adversely affected. The scheme shall subsequently be implemented in accordance

with the approved details before the development is completed. The scheme shall also include details of how the scheme is to be maintained and managed after completion.

Reason: To prevent the increased risk of flooding, both on and off site and to protect biodiversity interests in compliance with Policies CS3 and CS6 of the Core Strategy for New Forest District outside the National Park.

10. Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until conditions relating to contamination no 11 to 13 have been complied with.

If unexpected contamination is found after the development of any buildings has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until condition 14 relating to the reporting of unexpected contamination has been complied with in relation to that contamination.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy CS5 of the Core Strategy for the New Forest District outside the National Park.

11. An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
 - human health,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - adjoining land,
 - groundwaters and surface waters,
 - ecological systems,
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's *'Model Procedures for the Management of Land Contamination, CLR 11'*.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy CS5 of the Core Strategy for the New Forest District outside the National Park.

12. A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy CS5 of the Core Strategy for the New Forest District outside the National Park.

13. The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy CS5 of the Core Strategy for the New Forest District outside the National Park.

14. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 11, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 12, which is subject to the approval in writing of the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 13.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy CS5 of the Core Strategy for the New Forest District outside the National Park.

15. A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a agreed period (as stated in the remediation scheme), and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the Local Planning Authority. Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the Local Planning Authority. This must be conducted in accordance with DEFRA and the Environment Agency's *'Model Procedures for the Management of Land Contamination, CLR 11'*.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy CS5 of the Core Strategy for the New Forest District outside the National Park.

16. No external lighting shall be installed in connection with the approved development unless precise details of the lighting to be installed has been first submitted to and approved in writing by the Local Planning Authority. Development shall only proceed in accordance with the approved details.

Reason: To ensure that new lighting is designed so as to minimise potential adverse impacts on bats and biodiversity interests and to comply with Policy CS3 of the Core Strategy for New Forest District outside the National Park.

17. Notwithstanding the submitted application particulars, the part of the site which is shown shaded in yellow on the approved drawings (drawing 962-LM-01 B) shall not be used for any purpose falling under Use Class B2 of the Town and Country Planning (Use Classes) Order 2005 or any subsequent re-enactments thereof. This yellow shaded area shall be used only for purposes falling under Use Classes B1(b), B1(c) and B8 (including B8 open storage) of the Town and Country Planning (Use Classes) Order 2005 or any subsequent re-enactments thereof.

Reason: To protect nearby residential properties from potential adverse noise and odours impacts arising from a general industrial B2 use and to comply with Policy CS2 of the Core Strategy for New Forest District outside the National Park.

18. No vehicles, goods, plant, or machinery shall be stored or parked on the approved soft landscaped areas of the site at any time.

Reason: In the interest of the visual amenities of the locality in accordance with policy CS2 of the Core Strategy for the New Forest District outside the National Park.

19. No building approved pursuant to this planning permission shall have an eaves height of in excess of 16.1 metres AOD in height, nor a ridge height in excess of 18.1 metres AOD in height.

Reason: This is the basis on which the application has been assessed. The Local Planning Authority would need to give further consideration to the potential impact of any taller building to ensure it would not be harmful to residential or visual amenities and to comply with Policy CS2 of the Core Strategy for New Forest District outside the National Park.

20. The development permitted shall be carried out in accordance with the following approved plans: 962-LM-02 B, 962-LM-03 B, 962-LM-01 B, 962-LM-05 D, 962-LM-04 C, 962-LM-09 A, 962-LM-08 A, 962-LM-13 A, 962-LM-06 A, 962-LM-07 A, 962-LM-10 A, 962-LM-12 A, 962-LM-11 A, CS-561.03 rev D, CS-561.04 rev C.

Reason: To ensure satisfactory provision of the development.

Notes for inclusion on certificate:

1. In accordance with paragraphs 186 and 187 of the National Planning Policy Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council takes a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome by giving clear advice to applicants.

In this case, there have been discussions with the applicants and their agent since the application was submitted, which has resulted in the submission of additional information that has enabled a positive recommendation to be made.

Further Information:

Major Team

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**Planning Development
Control Committee
October 2016**

Item No: 3dd & 3ee

**Pond 1
East Road
Marchwood Industrial Park
16/11098 & 11099
SU3811**

Scale 1:5000

**N.B. If printing this plan from
the internet, it will not be to
scale.**

