

Application Number: 16/11099 Variation / Removal of Condition

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

Development: Variation of Condition 4 of Planning Permission 12/99450 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)
- CS17: Employment and economic development

Local Plan Part 2 Sites and Development Management Development Plan Document

- DM2: Nature conservation, biodiversity and geodiversity
- 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 Partial infill of pond; associated landscaping (12/99450) - granted 7/2/13
- 6.2 Variation of condition 5 of Planning Permission 12/99485 to allow landscaping in stages. Item 3dd 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. Planning permission was 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. To ensure that the full set of landscape and ecological mitigation measures were delivered, the Local Planning Authority granted planning permission subject to a number of conditions. Condition 4 of Planning permission 12/99450 states that:-

"The landscape proposals approved under this planning permission (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 on the areas of pond infill approved by 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."

- 14.2 Roughly at the same time as granting planning permission for the pond infill (application 12/99450), 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.
- 14.3 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 while 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 4. They have also submitted a separate related application to vary condition 5 of Planning permission 12/99485. 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 planning permission 12/99485 on an area of land known as Plot L6.

- 14.4 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, (the Parish Council have been notified about this additional information, any further comments will be reported at the meeting). 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 to remaining landscaping and rearrange access to adjacent parts of the site to avoid any future conflict with the landscape strip and its ongoing management.
- 14.5 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 4 cannot be varied.
- 14.6 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 4 of planning permission 12/99450. 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.

- 14.7 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 in granting a variation of condition there is also a need to reapply relevant conditions of the original planning permission, and make necessary adjustments to their wording to take account of current circumstances and policies.
- 14.8 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. The development permitted shall be carried out in accordance with the following approved plans: 962-PF-02B, 962-PF-06B, 962-PF-10B, 962-PF-11B, 962-PF-07B, CS-561.04 rev C , CS-561.03 rev D , 962-PF-09B, 962-PF-08-B, 962-LP-01-A.

Reason: To ensure satisfactory provision of the development.
2. A risk assessment shall be submitted to the Local Planning Authority for its written approval demonstrating that the imported infilled material and the cover surface does not present a risk to human health. This risk assessment shall be submitted within 2 months of the date of this permission and any recommendations made within the Risk Assessment shall be implemented within a further 2 months unless an alternative timeframe is otherwise agreed in writing by the Local Planning Authority, and the measures

recommended within the Risk Assessment that are implemented shall thereafter be retained.

Reason: To address potential contamination and to safeguard human health in accordance with Policy CS5 of the Core Strategy for New Forest District outside the National Park.

3. Development shall only take place in accordance with all of the mitigation measures detailed in Section 3.2 of the submitted Ecological Impact Assessment (by 4 Woods Ecology, dated October 2012) unless otherwise agreed in writing with the Local Planning Authority.

Reason: To protect and enhance ecological interests in accordance with Policy CS3 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.

4. 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 by this planning permission;
- 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 planning permission 12/99485 on Plot L6 as shown on the Landscape Phasing Plan (Drawing No 9620-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.

5. A biodiversity and landscape management / maintenance plan for the retained pond and area of enhanced landscaping (the land outlined in blue on drawing 962-PF-02B) 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 on the areas of pond infill approved by 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 MAR5 of the Local Plan Part 2: Sites and Development Management.

6. Development shall take place fully in accordance with Quayside Architect's Flood Risk Assessment dated 9th November 2012 unless otherwise agreed in writing with the Local Planning Authority.

Reason: To ensure the proposal does not increase flood risk elsewhere and to comply with Policy CS6 of the Core Strategy for New Forest District outside the National Park.

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.

