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Attention: Heather Carlisle
Planning Services Herefordshire Council
Council Offices
Plough Lane
Hereford
HR4 0LE

Your reference

Our reference

PPC/PPC/367748/185
UKM/125000975.2

By Email Only: heather.carlisle@herefordshire.gov.uk

4 October 2023

Dear Madam

Application reference: P222138/O
Land at Three Elms, Hereford (“Development Site”)

As you are aware, we act for Heineken UK Limited in connection with outline planning application reference P222138/O (“**Application**”) for the proposed first phase of an urban extension comprising up to 350 homes (Use Class C3); park & choose interchange; together with open and play space, landscaping, infrastructure and associated works (“**Proposed Development**”) at the Development Site.

We write further to our letters of 31 August 2022 (“**August 2022 Letter**”) and 1 March 2023 (“**March 2023 Letter**”), reproduced at Annexures 1 and 2 respectively for your ease of reference, in which we stated the importance to our client of the mitigation measures set out in appendix 11.5 to the Environmental Statement accompanying the Application being appropriately secured by way of a planning condition or planning obligation (as appropriate).

We note that since the August 2022 Letter and the March 2023 Letter, the Applicant has submitted revised documents in support of the Application. However, we also note that none of our client’s concerns initially raised in the August 2022 Letter have been addressed. Accordingly, our client continues to object to the Proposed Development for the reasons set out in the August 2022 Letter.

As previously stated, our client will withdraw its objection to the Proposed Development if the mitigation measures (together with the additional measures set out in the August 2022 Letter) are adequately secured.

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Should you have any queries regarding this letter, please contact Pieter Claussen of this office on [REDACTED] or by email at [REDACTED]. We should also be grateful if you would continue to keep us fully informed of the progress of the Application, including any draft planning conditions or planning obligations proposed.

Yours faithfully



DLA Piper UK LLP

Appendix 1: Letter Dated 2 March 2023



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By Email Only: heather.carlisle@herefordshire.gov.uk

2 March 2023

Dear Madam

**Application reference: P222138/O
Land at Three Elms, Hereford (“Development Site”)**

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Yours faithfully

[REDACTED]

DLA Piper UK LLP

Appendix 2: Letter dated 31 August 2022



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Your reference

Our reference

PPC/PPC/367748/185
UKM/120970246.1

By Email Only: heather.carlisle@herefordshire.gov.uk

31 August 2022

Dear Madam

Application reference: P222138/O
Land at Three Elms, Hereford (“Development Site”)

We act for Heineken UK Limited in connection with outline planning application reference P222138/O (“**Application**”) for the proposed first phase of an urban extension comprising up to 350 homes (Use Class C3); park & choose interchange; together with open and play space, landscaping, infrastructure and associated works (“**Proposed Development**”) at the Development Site.

As you are aware, we have previously made representations on our client’s behalf in respect of application reference P162920/F (“**Original Application**”). It is noted that the Original Application remains undetermined and this letter is without prejudice to those submissions, which remain extant.

Since the submission of the Original Application, our client has worked collaboratively with the Applicant and its agents to address our client’s concerns relating to potential impacts on its own water supply at its production facility at The Cider Mills, Plough Lane, Hereford, HR4 0LE (“**Cider Mills**”).

Our client is pleased, therefore, that the Application has adequately assessed the risk to its local groundwater supplies, as well as mains water supply and flood risks associated with the Proposed Development.

However, as set out in our objection letter of 19 December 2016 (in connection with the Original Application), any threat to either the quality or quantity of water our client is able extract would have a devastating effect on the local community and would impact the feasibility of our client continuing its operations at Cider Mills.

Therefore, it is of critical importance to our client that the mitigation measures set out in appendix 11.5 to the Environmental Statement accompanying the Application (“**Mitigation Plan**”), are appropriately secured by way of a planning condition or planning obligation (as appropriate) and that the measures set out in paragraphs 2 to 10; 12; and 13 of the Mitigation Plan are secured in perpetuity, with adequate management and monitoring arrangements in place.

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In addition, our client makes the following comments and recommendations in respect of the Mitigation Plan.

Compliance with agreed excavation strategy

Whilst our client supports the general direction of paragraph 2 of the Mitigation Plan, it is noted that the text contained therein has simply been lifted from parts of the submitted Flood Risk Assessment and Drainage Strategy (appendix 13.1 to the Environmental Statement) and does not represent a proposed condition.

Accordingly, our client would welcome the opportunity to review any condition proposed in respect of compliance with the excavation strategy as it is of fundamental importance to our client that the recommendations of the Environment Agency (“EA”) in its letter to the Applicant’s agent (dated 13 April 2021)¹ are secured as part of any excavation. In particular, our client fully endorses the EA’s recommendation that all basins and swales within SPZ 2 should either be provided with 2.0m of till cover, or otherwise be provided with an impermeable liner to prevent infiltration into the aquifer, with 1.5m of till cover.

Finally, our client notes that paragraph 2 of the Mitigation Plan does not currently envisage that it is prepared in consultation with, or approved by, the EA. As a minimum, our client would expect the proposed excavation strategy to be prepared in consultation with the EA before it is submitted to the Council for approval.

Geophysical Survey

As with the excavation strategy, our client supports the proposals set out in paragraph 3 of the Mitigation Plan. We note that the proposed condition does not envisage collaboration with the EA and our client suggests that the EA should either be prepared in consultation with the EA, or approved by the Council together with the EA.

Contamination and unexpected contamination

Our client supports the Applicant’s proposals at paragraph 4 of the Mitigation Plan, however, whilst this paragraph purports to be a proposed condition attached to a planning permission, it is not worded as such and our client would welcome the opportunity to comment on the condition once formulated.

In addition, our client notes that paragraph 11.102 of the Environmental Statement references the bacteriological contamination identified in the further ground investigation undertaken by the Applicant and states that “*investigation into the potential source of the contamination will be required.*” Paragraph 13.138 goes on to consider this bacteriological impact which is noted as having short term, temporary, local and major adverse impact on groundwater (significant). Clearly, this has the potential to have a significant impact to our client’s operations at Cider Mills. It is also noted that there is nothing in the Environmental Statement which mitigates this risk and our client requires this risk to be mitigated as part of the condition proposed pursuant to paragraph 4 of the Mitigation Plan. Our client would welcome discussions with the Applicant and/or the Council as to how this risk can be appropriately addressed by way of a condition attached to any planning permission.

It is also noted that the Environmental Statement provides that “*Attenuation basins should be lined or constructed of clean low permeability materials where there is a risk of leakage.*” It is noted that this text contradicts that which is proposed as part of the excavation strategy and which is recommended

¹ Appendix D to the submitted Flood Risk Assessment and Drainage Strategy (appendix 13.1 to the Environmental Statement).

by the EA – that robust lining systems must be used in SPZ 1. Our client accepts that this is probably an oversight by the Applicant and that such a *robust lining* is proposed elsewhere within the Environmental Statement and within the Mitigation Plan, however, given the potential risk to our client's ongoing operations at Cider Mills, it is of critical importance that the position is clarified and that the recommendations proposed by the EA are adhered to.

Construction Environment Management Plan

Our client supports paragraph 6 of the of the Mitigation Plan and agrees that such a plan ("CEMP") is secured by way of a condition.

However, it is of paramount importance that the mitigation measures proposed in the CEMP are secured in perpetuity. Accordingly, our client recommends a further condition is attached to the planning permission as follows:

Prior to the first occupation of the development, a Handover Environmental Management Plan (HEMP) shall be submitted to and approved by the LPA following consultation with the Environment Agency. The HEMP will be in accordance with the CEMP and will contain:

(a) the environmental information needed for the future maintenance and operation of the authorised development;

(b) the long-term commitments to aftercare, monitoring and maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued long-term effectiveness of the environmental mitigation measures and the prevention of unexpected environmental impacts during the operation of the authorised development; and

(c) a record of the consents, commitments and permissions resulting from liaison with statutory bodies.

The development must be operated and maintained in accordance with the HEMP.

Emergency Response Plan

Our client agrees that paragraph 7 of the Mitigation Plan should be secured by way of a condition. Our client welcomes the Applicant's suggestion that a process is set up for liaison with our client on matters relating to activities that could impact the integrity of its water supplies and would be happy to discuss an appropriate emergency response plan in further detail with the Applicant.

Surface Water Drainage Condition

Our client agrees that the principles set out within paragraph 8 of the Mitigation Plan should be secured by way of our condition. However, as set out above, it is critical to our client that the measures proposed are secured in perpetuity and so our client proposes the following amendments to paragraph 8 of the Mitigation Plan (NB. Amendments are shown in red and strikethrough):

*8.2 A condition ~~/obligation~~ will set out the long-term **management and maintenance** arrangements for all parts of **the system and will ensure that those arrangements are secured in perpetuity***

8.3 The scheme shall subsequently be implemented in accordance with the approved details prior to occupation of any properties ~~part of the development and thereafter complied with in perpetuity~~

Foul Water Drainage Condition

As with paragraph 8, our client agrees that paragraph 9 of the Mitigation Plan should be secured by way of condition, subject to the following amendments (shown in red and strikethrough) which ensure that the measures are secured in perpetuity:

9.2 A condition ~~/obligation~~ will set out the long-term ~~management and maintenance~~ arrangements for all parts of ~~the system and will ensure that those arrangements are secured in perpetuity~~

9.3 The scheme shall subsequently be implemented in accordance with the approved details before the development is completed ~~and thereafter complied with in perpetuity~~

Fluvial Flood Risk Condition

Our client supports paragraph 10 of the Mitigation Plan being secured by condition, together with an additional condition which ensures that the flood storage areas are managed and maintained in perpetuity.

Pesticides

Our client notes that paragraph 12 of the Mitigation Plan (i.e. the requirement to comply with a management scheme and not to use pesticides and herbicides at the Proposed Development) is proposed to be secured through a planning obligation made pursuant to section 106 of the Town and Country Planning Act 1990, whereby an obligation is placed on a management company to comply with a management scheme. We have no objection to this in principle, although careful consideration will need to be given to the drafting of this provision to ensure that it is legally enforceable.

Furthermore, it is noted that paragraph 13 of the Mitigation Plan will require a clause to be included in a section 106 agreement, whereby owners and occupiers of the Site are educated as to the use of chemicals on their Property. Whilst our client is supportive of such a pack being issued, the agreement will need to be drafted to ensure that all future occupiers of the Site are issued with such a pack.

More importantly, however, our client requires the Agreement to be enforceable against individual owners and occupiers of the dwellings to ensure that no harmful chemicals are used at individual properties. As above, our client would welcome the opportunity to be involved in the negotiation of any section 106 agreement to ensure that such measures are adequately secured.

Summary

In summary, our client has no objection to the Proposed Development, provided that:

1. the measures set out in paragraphs 2 to 10; 12 and 13 of the Mitigation Plan are secured by way of a planning condition or obligation; and

2. the additional measures set out in this letter are addressed through the planning application process or are otherwise secured by way of a planning condition or obligation.

and our client will withdraw its objection to the Proposed Development if these are secured.

Otherwise, our client objects to the Proposed Development on the basis that the proposed mitigation measures, together with the vital additional measures set out in this letter, have not been adequately secured.

Our client notes that this is simply the first phase of a wider development and so it is critical that appropriate mitigation measures are secured now so as to set the appropriate precedent for any further development adjacent to its Cider Mills facility.

Our client would welcome the opportunity to discuss any proposed conditions with the Applicant and the Council and if the Council is minded to secure any of the above measures by way of a section 106 agreement, our client would like to be involved in the negotiation of such an agreement to ensure that its concerns are appropriately addressed.

Should you have any queries regarding this letter, please contact Pieter Claussen of this office on [REDACTED] or by email at [REDACTED]. We should also be grateful if you would keep us fully informed of the progress of the Application, including any draft planning conditions or planning obligations proposed.

Yours faithfully

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