



Mr M Tansley
Development Management
Herefordshire Council
Plough Lane
HR4 0LE

8th November 2019

Dear Mr Tansley,

EB 19184 - Brook House Farm, Yarpole

Application to vary conditions 9, 11 and 12 of planning permission 162256

The application

This application is submitted on behalf of Border Oak (the applicant) under section 73 of the Town and Country Planning Act 1990. It seeks to vary conditions 9, 11 and 12 of planning permission 162256 which permitted a residential development described as:

*Demolition of redundant farm buildings and conversion of existing Dutch barn to dwelling;
erection of 7 no. dwellings and associated car ports and parking.*

The conditions in question read as follows, with the Council's stated reason for their use below.

9. *No new development shall commence on site until a detailed habitat & biodiversity enhancement scheme, based upon the recommendations in the ecology report by Star Ecology (dated 31 May 2016); including but not limited to type and location of bat roosting and bird nesting, hedgehog and invertebrate mitigation/enhancements, a lighting plan and a detailed landscape & planting proposal with an associated 5 year establishment and replacement plan be submitted to, and approved in writing by, the local planning authority.*

The mitigation/enhancement scheme and landscaping plan shall be implemented as approved.

Reason: To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation (Natural Habitats, &c) Regulations 1994 (as amended) and Policy LD2 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

11. *No development approved by this permission shall be commenced until a scheme for the provision of surface water drainage works has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented before the first occupation of the development hereby approved.*

Reason: To prevent the increased risk of flooding by ensuring the provision of a satisfactory means of surface water disposal and to comply with Policy SD3 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

12. *No development approved by this permission shall be commenced until a scheme for the provision of a surface water attenuation system has been approved in writing by the local planning authority and subsequently implemented.*

Reason: To prevent the increased risk of flooding and to comply with Policies SD3 and SD4 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

This application seeks to vary the three conditions to delay their ‘trigger points’ such that ground works and site clearance can take place prior to the submission of the information required by each condition. This would be analogous with the trigger points for conditions 3 and 5 of the permission.

The applicant seeks this variation so that the permission can be implemented promptly, prior to its expiry on 8th March 2020. Once the permission is implemented and retained in perpetuity, this will release time pressures on the applicant who subsequently proposes to deposit a new planning application which revisits the design and layout of the scheme. Varying these conditions to allow the implementation of the permission is crucial to the applicant’s plans to developing the site and subsequent delivery of housing in the context of a chronic under-supply.

Condition 9 - Ecology

Condition 9 requires the submission of an ecology enhancement scheme. This isn’t a protectionist condition. Indeed, the permission conveys that the effects of the development on priority species and their habitats was suitably explained by the ecology report from Star Ecology, the mitigation and protection measures of which are required to be implemented by Condition 8 (which for clarity, does not require further submission on the developer’s part).

On this basis, it is clear that Condition 9 does not seek to control the way in which the development is carried out in any way nor does it even relate to mitigation works. Rather, it requires the delivery of *enhancement* works alongside the build, a solidification of enhancement measures recommended at the application stage. It certainly doesn't require any information pursuant to the method of demolition or ground works or indeed any mitigation for those works.

The condition explicitly requires the delivery of boxes for bat roosting and bird nesting, hedgehog and invertebrate enhancements, a lighting plan and a detailed planting proposal. The developer's ability to deliver such enhancements, or any other biodiversity enhancements for that matter, would not be affected by the site being cleared and ground works being undertaken. Indeed, enhancement measures can only realistically be undertaken towards the end of the development process and in the case of planting (as per condition 6) it must be undertaken "*no later than the first planting season following the completion of the development*".

Conditions 11 & 12 – Drainage

Condition 11 requires that development does not commence until surface water drainage matters are agreed. Similarly, condition 12 requires that a scheme for surface water attenuation is agreed before development commences.

The conditions are very similar. They are concerned with ensuring that the approved buildings and other non-permeable surfaces do not create excess run off which in turn might give rise to flooding or other environmental issues. As the need for surface water drainage only arises once materials are laid on the ground, as it is this undertaking which might create excess runoff, there is no reason why site clearance and groundworks shouldn't occur before details of the drainage scheme are agreed. Indeed, site clearance, particularly the demolition of buildings, would inherently have a positive impact surface water run off levels as the area of non-porous coverage would be reduced.

Conclusions and recommended conditions

In our view and for the reasons set out in this letter, we see no reason why the trigger points for conditions 9, 11 & 12 shouldn't be delayed to allow the submission of details pursuant to biodiversity enhancement, surface water drainage and surface water attenuation once site clearance and grounds works have been undertaken. We therefore suggest that the application should be approved and the conditions should be varied to read as follows.

9. With the exception of any site clearance and groundwork (excluding any works to retained features), no further development shall commence on site until a detailed habitat & biodiversity enhancement scheme, based upon the recommendations in the ecology report by Star Ecology (dated 31 May 2016); including but not limited to type and location of bat roosting and bird nesting, hedgehog and invertebrate mitigation/enhancements, a lighting plan and a detailed landscape & planting proposal with an associated 5 year establishment

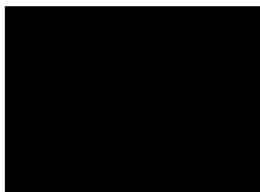
and replacement plan be submitted to, and approved in writing by, the local planning authority. The mitigation/enhancement scheme and landscaping plan shall be implemented as approved.

10. With the exception of any site clearance and groundwork (excluding any works to retained features), no further development shall commence on site until a scheme for the provision of surface water drainage works has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented before the first occupation of the development hereby approved.

11. With the exception of any site clearance and groundwork (excluding any works to retained features), no further development shall commence on site until a scheme for the provision of a surface water attenuation system has been approved in writing by the local planning authority and subsequently implemented.

I hope the above is clear but, should you have any queries, please do let me know and I should be happy to assist.

Yours faithfully,



Matt Tompkins
Partner