

Delegated Report

Planning Ref: 22/00350/CONDIT
Applicant: BF Trading Ltd
Ward: Barlestone, Nailstone and Osbaston



Hinckley & Bosworth
Borough Council

Site: Land adjacent Lodge Farm, Wood Road, Nailstone

Proposal: Variation of Condition 5 of Planning Application 20/00020/FUL. Amendment to Great Crested Newt Mitigation Strategy

1. Recommendations

- 1.1. **Grant planning permission** subject to the conditions at the end of this report.

2. Planning Application Description

- 2.1. This application seeks the variation of condition 5 attached to the decision on application 20/00020/FUL for the change of use of part of land for the siting of storage container units (Use Class B8), and a machinery and maintenance building, vehicular access, screen wall and screen planting on land adjacent Lodge Farm, Wood Road, Nailstone. Condition 5 reads as follows:

5. Prior to the commencement of any development on site the mitigation measures as outlined in the Great Crested Newt Mitigation Strategy (Middlemarch Environmental, November 2019) shall be implemented in full and retained on the site at all times during the construction of the proposed scheme.

- 2.2. The proposed change to condition 5 is to allow for phasing of the development so that works can commence before the permission expires. The current wording of condition 5 poses difficulties due to the length of the access drive. The applicant proposes that future phases of work beyond phase 1 will require further GCN mitigation surveys once work has commenced. The proposed condition reads as follows:

5. Prior to the commencement of any development, or if the development is commenced on a particular phase of the approved development, the mitigation measures as outlined in the Great Crested Newt Mitigation Strategy (Middlemarch Environmental, November 2019), or any subsequently agreed Precautionary Method of Works (GCN) or other agreed Mitigation Strategy, shall be implemented in full and retained on the site at all times during the construction of the proposed scheme.

3. Description of the Site and Surrounding Area

- 3.1. The application site is part of a larger 2-hectare field located alongside Wood Road in an area of countryside. The vacant Nailstone Colliery site, which is allocated as an Employment Site in the SADMP, is located on the opposite side of Wood Road approximately 175 metres to the north. Country Parks proposed as part of the Employment Allocation at Nailstone Colliery are located to the east and north-west of the application site along with a commercial use taking place from former agricultural buildings at Lodge Farm to the west and a solar farm to the south. An area of broadleaved woodland lies to the north of the site.
- 3.2. There is an existing hedge and ditch along the road frontage. The site comprises a field of unmanaged rough grassland, tall ruderal vegetation and scrub with a damp substrate. There is no vehicular access into the site. An unauthorised access which is subject to an extant enforcement notice has been blocked with a fallen tree trunk and the area beyond it remains as grassland.

4. Relevant planning history

20/00020/FUL – Change of use of part of land for the siting of storage container units (Use Class B8), and a machinery and maintenance building, vehicular access, screen wall and screen planting – Approved 17.06.2020.

5. Publicity

- 5.1. The application has been advertised by means of a site notices. No representations have been received.

6. Consultation

- 6.1. Nailstone Parish Council – no comment
- 6.2. Leicestershire County Ecologist – No objection.
- 6.3. LCC Highways – No objection
- 6.4. HBBC Environmental Health (Pollution) – No objection.
- 6.5. HBBC Waste – no objection.

7. Policy

- 7.1. Core Strategy (2009)
- Policy 11: Key Rural Centres Stand Alone
 - Policy 14: Rural Areas Transport
- 7.2. Site Allocations and Development Management Policies DPD (2016)
- Policy DM1: Presumption in Favour of Sustainable Development
 - Policy DM3: Infrastructure and Delivery
 - Policy DM4: Safeguarding the Countryside and Settlement Separation
 - Policy DM6: Enhancement of biodiversity and Geological Interest
 - Policy DM7: Preventing Pollution and Flooding
 - Policy DM10: Development and Design
 - Policy DM17: Highways and Transportation
 - Policy DM18: Vehicle Parking Standards
- 7.3. National Planning Policies and Guidance
- National Planning Policy Framework (NPPF) (2021)
 - Planning Practice Guidance (PPG)
- 7.4. Other relevant guidance
- Leicestershire Highways Design Guide
- #### **8. Appraisal**
- 8.1. The principle of development has been established via approval 20/00020/FUL. The key issues are therefore:
- Whether development can commence prior to a comprehensive GCN mitigation strategy being completed and approved.
 - Whether there are any other key considerations.

- 8.2. The applicant has submitted a Precautionary Method of Works (JM Ecology, received 02.05.23) which provides construction phase prescriptions to mitigate any risk of offence against individual GCN. The PMW also outlines that a site walkover will take place to ensure baseline habitats are not optimal for GCN refuge. It states that the work will not fragment GCN populations or inhibit their ability to disperse south; further justifying this approach. Other risks of offence during construction will be managed under a PMW. The re-worded condition will ensure that this mitigation takes place.
- 8.3. The proposed changes to condition 5 is specific and limited in scope. It will result in the applicant being able to commence development whilst adopting a phased approach to GCN mitigation, which is considered reasonable in this case. The County Ecologist has stated that the approach is acceptable and has no objections.
- 8.4. It is not considered that there are any other material considerations that are relevant to the determination of this application.
- 8.5. It is concluded that the proposed change to conditions 5 of 20/00020/FUL is acceptable and in accordance with national planning policy and guidance and Policy DM6 of the SADMP.

Conditions

- 8.6. All other conditions set out in the decision notice are repeated.

9. Equality Implications

- 9.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-
- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 9.2 Officers have taken this into account and given due regard to this statutory duty, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application.
- 9.3 There are no known equality implications arising directly from this development.
- 9.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Conclusion

- 10.1 The proposal is considered to be compliant with relevant national and local policy and guidance as it proposes to protect great crested newts via phased on site mitigation which is reasonable and necessary to allow for development to commence and for a logical phasing of works as outlined in the PMW. There are no detrimental effects on the requirements Policy DM6 of the SADMP with regard to ecology.
- 10.2. Taking national and local planning policies into account, along with all relevant material considerations, it is recommended that planning permission be granted, subject to the imposition of appropriate conditions set out below.

11 Recommendation

11.1 **Grant planning permission** subject to the conditions below.

11.2 Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of planning permission reference 20/00020/FUL (24/06/2020).

Reason: To comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details, as follows: Drws No: E19 36 010 Rev A received by the local planning authority on 23 January 2020, E19 36 011 Rev C received by the local planning authority on 9 January 2020 and the Shipping Container Plan and Machinery/Tool Shed received by the local planning authority on 12 March 2020.

Reason: To ensure a satisfactory appearance and impact of the development to accord with Policy DM1, Policy DM4 and Policy DM10 of the adopted Site Allocations and Development Management Policies DPD.

3. The application site shall only be used as for the siting of storage containers and shall not be used for any other purposes falling within Class B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

Reason: To ensure that the use remains compatible with the surrounding area to accord with Policies DM10 and DM17 of the SADMP.

4. The building hereby approved shall only be used between the hours of 07.30 to 17.30 Monday to Friday and at no time on Saturdays, Sundays or Public Holidays.

Reason: To ensure that the proposed use does not become a source of annoyance to nearby residents to accord with Policy DM10 of the SADMP.

5. Prior to the commencement of any development, or if the development is commenced on a particular phase of the approved development, the mitigation measures as outlined in the Great Crested Newt Mitigation Strategy (Middlemarch Environmental, November 2019), or any subsequently agreed Precautionary Method of Works (GCN) or other agreed Mitigation Strategy, shall be implemented

in full and retained on the site at all times during the construction of the proposed scheme.

Reason: To ensure that the approved scheme does not have an impact on protected species in accordance with Policy DM6 of the SADMP (2016).

6. The materials to be used on the external elevations of the building hereby permitted shall be implemented in accordance with the materials submitted to and approved by the local planning authority under planning reference 22/00908/DISCON.

Reason: To ensure that the development has a satisfactory appearance in the interests of visual amenity in accordance with Policy DM10 of the SADMP (2016).

7. The development shall be carried out in accordance with the approved scheme for the permanent closure of the existing access on to Wood Road submitted and approved by the local planning authority under planning reference 22/00908/DISCON. The approved scheme shall be implemented in full prior to first use of the development hereby permitted.

Reason: In the interests of highway safety and in accordance with Policy DM17 of the SADMP (2016).

8. The development shall be carried out in accordance with the construction traffic management plan submitted to and approved by the local planning authority under planning reference 22/00908/DISCON.

Reason: To reduce the possibility of deleterious material (mud, stones etc) being deposited in the highway and becoming a hazard for road users and to ensure that construction traffic does not use unsatisfactory roads and lead to on-street parking problems in the area.

9. The development shall be carried out in accordance with the landscaping scheme submitted to and approved by the local planning authority under planning reference 22/00908/DISCON. All landscaping, planting, seeding or turfing shown on the approved landscaping scheme shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority. Any part which, within a period of 5 years of being planted die are removed or seriously damaged or seriously diseased, shall be replaced in the next planting season with others of similar size and species.

Reason: To ensure a satisfactory appearance and impact of the development to accord with Policy DM1, Policy DM4 and Policy DM10 of the adopted Site Allocations and Development Management Policies DPD.

10. No part of the development hereby permitted shall be brought into use until such time as the access arrangements shown on Drw no: E19-36-011 Rev C have been implemented in full. The visibility splays, once provided, shall thereafter be permanently maintained with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway.

Reason: To ensure that vehicles entering and leaving the site may pass each other clear of the highway, in a slow and controlled manner, in the interests of general highway safety and in accordance with Policy DM17 of the SADMP (2016).

11. No part of the buildings hereby permitted shall be brought into use until such time as the parking and turning facilities have been implemented in accordance with Drw No: E19-36-011 Rev C. Thereafter the onsite parking provision shall be so maintained in perpetuity.

Reason: To ensure that adequate off-street parking provision is made to reduce the possibility of the proposed development leading to on-street parking problems locally (and to enable vehicles to enter and leave the site in a forward direction) in the interests of highway safety and in accordance with Policy DM17 of the SADMP (2016).

12. Notwithstanding the provisions of Part 2 of Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) no vehicular access gates, barriers, bollards, chains or other such obstructions shall be erected within a distance of 15 metres of the highway boundary, nor shall any be erected within a distance of 15 metres of the highway boundary unless hung to open away from the highway.

Reason: To enable a vehicle to stand clear of the highway in order to protect the free and safe passage of traffic including pedestrians in the public highway in accordance with Policy DM17 of the SADMP (2016).