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|-----------------|-------------------------------------------------------------------------------------------|---------------|-------------|
| Site Address:   | Southmere Farm, The Mallards, Havant                                                      |               |             |
| Proposal:       | Variation of Conditions 2 and 3 of Planning Permission APP/18/01262 relating to planting. |               |             |
| Application No: | APP/20/00289                                                                              | Expiry Date:  | 11/06/2020  |
| Applicant:      | Knightsgate UK Limited                                                                    |               |             |
| Agent:          | Mr M Wilkes                                                                               | Case Officer: | David Eaves |
|                 | M2 Architecture                                                                           |               |             |
| Ward:           | St Faiths                                                                                 |               |             |

Recommendation: **GRANT PERMISSION**

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## **1 Site Description**

The site was formerly a small farm complex with a taller agricultural barn, lower byres and more modern and utilitarian lower barns and other structures. These buildings have now been demolished and 3No. two storey detached dwellings have been erected on the site.

To the north of the site are residential properties within The Mallards a small estate. To the west is a small river with trees beyond. To the south is Southmere Field a meadow. Access to the site is from the Mallards to the east with Langstone Road beyond.

## **2 Planning History**

APP/18/00380 - Outline application for the construction of 3No. two storey detached dwellings, following demolition of existing buildings (Approved 13/09/2018). Request to discharge Condition No's 4, 5, 7, 8, 9, 10, 12, 13, 14 and 15 (30/11/2018).(Approved 28.03.19).Request to Discharge Condition No.5 (2), (3), (4) 10.05.19. , PERM,13/09/2018

APP/18/01262 - Reserved matters application following outline Planning Permission APP/18/00380 relating to appearance and landscaping., PERM,19/07/2019

## **3 Proposal**

Variation of Conditions 2 and 3 of Planning Permission APP/18/01262 relating to planting.

The conditions of relevance are set out below:

### **Conditions:**

*2 A written report detailing the implementation of the habitat enhancement measures for the Langstone Brook shall be submitted to the Local Planning Authority no later than three months after the commencement of development activities, unless otherwise agreed in writing by the Local Planning Authority. The report shall include evidence that the required sensitive landscaping actions have been carried out as*

*described within landscape drawing 200 revision E (M2 Architecture, 6 February 2019) and the Wildlife Protection and Habitat Enhancement Scheme (David Leach, February 2019). The report shall include details (timescales, actions and responsibilities) of ongoing monitoring and maintenance of repaired habitats.*

*Our Ref: APP/18/01262*

**Reason:** *to protect and enhance biodiversity in accordance with the NERC Act 2006, NPPF and Policy CS 11 of the Havant Borough Local Plan (Core Strategy) 2011.*

*3 The works to the bankside shall be carried out by competent contractors under the supervision of a suitably qualified ecologist and in full accordance with the details described within landscape drawing 200 revision E and the Wildlife Protection and Habitat Enhancement Scheme (David Leach, February 2019).*

**Reason:** *To ensure that the works are carried out to an appropriate standard to protect the sites ecological interests in accordance with the NERC Act 2006, NPPF and Policy CS 11 of the Havant Borough Local Plan (Core Strategy) 2011.*

#### **4 Policy Considerations**

National Planning Policy Framework

Havant Borough Council Borough Design Guide SPD December 2011

Havant Borough Council Parking SPD July 2016

##### Havant Borough Local Plan (Core Strategy) March 2011

|      |                                                                                   |
|------|-----------------------------------------------------------------------------------|
| CS11 | (Protecting and Enhancing the Special Environment and Heritage of Havant Borough) |
| CS15 | (Flood and Coastal Erosion)                                                       |
| CS16 | (High Quality Design)                                                             |
| CS17 | (Concentration and Distribution of Development within the Urban Areas)            |
| CS21 | (Developer Requirements)                                                          |
| CS9  | (Housing)                                                                         |
| DM13 | (Car and Cycle Parking on Residential Development)                                |
| DM8  | (Conservation, Protection and Enhancement of Existing Natural Features)           |

##### Havant Borough Local Plan (Allocations) July 2014

|      |                                                                  |
|------|------------------------------------------------------------------|
| DM17 | (Contaminated Land)                                              |
| AL1  | (Presumption in Favour of Sustainable Development)               |
| DM18 | (Protecting New Development from Pollution)                      |
| DM23 | (Sites for Brent Geese and Waders)                               |
| AL2  | (Urban Area Boundaries and Undeveloped Gaps between Settlements) |

##### Havant Borough Pre Submission Local Plan 2036

Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

## **5     Statutory and Non Statutory Consultations**

### **Coastal Engineering**

Thank you for your consultation on the above application, I apologise for the delay in getting this response to you. I can confirm that Coastal Partners (formerly the Eastern Solent Coastal Partnership (ESCP)) have no comment to make on the proposed variation of Conditions 2 and 3.

### **County Ecologist**

Thank you for consulting me on this application. The amended method statement including planting list for native marginal plant species is acceptable.

It is essential that any amended conditions retain those elements not covered by the new Method Statement i.e. those ecological mitigation, compensation and enhancement measures detailed within the previously-submitted Wildlife Protection and Habitat Enhancement Scheme (David Leach, February 2019) as well as the slightly amended planting details provided.

If you are minded to allow the variation of condition, can I suggest the following wording?

Development shall proceed in strict accordance with the submitted Method Statement (Aquamaintain, April 2020) unless otherwise agreed in writing by the Local Planning Authority. A written report detailing the implementation of the habitat enhancement measures for the Langstone Brook shall be submitted to the Local Planning Authority no later than three months after the commencement of development activities, unless otherwise agreed in writing by the Local Planning Authority. The report shall include evidence that the required sensitive landscaping actions have been carried out as described within landscape drawing 200 revision E (M2 Architecture, 6 February 2019) and the Method Statement (Aquamaintain, April 2020). The report shall include details (timescales, actions and responsibilities) of ongoing monitoring and maintenance of repaired habitats. In addition, all works not related to riverbank restoration shall proceed in accordance with the submitted Wildlife Protection and Habitat Enhancement Scheme (David Leach, February 2019). Reason: to protect and enhance biodiversity in accordance with the NERC Act 2006, NPPF and Policy CS 11 of the Havant Borough Core Strategy March 2011.

### **Further Comments:**

As the works have already been carried out (at least in part) then I think that a reporting trigger at a set period after completion seems sensible? Or, as you say, within a set period of permission. I think no longer than three months.

The condition does need to refer to the latest iteration of the plan.

### **Final Comments:**

Yes, I would say that we do need to reimpose the second condition, updating it to include the later report. From a purely ecology view, the David Leach report contains some useful detail and it is awkward that the later report doesn't explicitly draw on that one.

As long as the works are carried out in accordance with the later report and are carried out by a competent contractor then we are good.

**Engineering/Drainage**

No comments received

**Environment Agency**

No comments received

**Hampshire Highways**

It is noted that these are ecology matters and are therefore not something that the Highway Authority comment on. The Highway Authority therefore no raise no objection to the application on the basis that the variation to Condition 2 and 3 has no impact on the Highway.

**Langstone Harbour Board**

The Board's Planning Sub Committee has considered this application and has no objections to the proposals.

**Natural England**

Thank you for consulting us on the above application and apologies for the delayed response. Natural England has no comments to make on the variation of conditions 2 and 3. Our responses dated 25th July 2018 (consultation number 252091) and 9th May 2018 (consultation number 244753) still stand.

Should the proposal be amended in a way which significantly affects its impact on the natural environment then, in accordance with Section 4 of the Natural Environment and Rural Communities Act 2006, Natural England should be consulted again. Before sending us any further consultations regarding this development, please assess whether the changes proposed will materially affect any of the advice we have previously offered. If they are unlikely to do so, please do not re-consult us.

**Officer Comment:** Consultee responses of the 25th July and 9th May 2018:

*Thank you for consulting Natural England on the additional information submitted for the above application. Our response dated 9th May 2018 (consultation number - 244753) still stands.*

*We recommend that a Biodiversity Mitigation and Enhancement Plan is submitted and agreed with the Hampshire County Council Ecologist. This should include both mitigation and enhancement measures during construction and post-construction to ensure habitats and species are protected and enhanced, and net gain in biodiversity is achieved.*

*Natural England encourages all new development to adopt the higher standard of water efficiency under the Building Regulations (which equates to 110 litres /head/day including external water use) and re-use in line with best practice. Consideration should be given to the use of grey water recycling systems and efficient appliances.*

9th May 2018

**NO OBJECTION - SUBJECT TO APPROPRIATE MITIGATION BEING SECURED**

This application site is within 5.6km of the Chichester and Langstone Harbours SPA and will lead to a net increase in residential dwellings. Natural England is aware that Havant Borough Council has adopted planning policy to mitigate against adverse effects from recreational disturbance on the Solent SPA sites, as agreed by the Solent Recreation Mitigation Partnership (SRMP) Definitive Strategy.

Provided that the applicant is complying with this policy and an appropriate planning condition or obligation is attached to any planning permission to secure the contributions towards this mitigation measure, Natural England is satisfied that the applicant has mitigated against the potential adverse effects of recreational disturbance on the integrity of the European site(s).

The development site is also immediately adjacent to a site (H27) classified as a 'Secondary Support Area' in the forthcoming update of the Solent Waders and Brent Goose Strategy. It is important for brent geese and curlew. Brent geese are a qualifying feature of the aforementioned SPA. As a precautionary measure, we recommend that the following condition is appended to the planning permission:

. No percussive piling or works with heavy machinery (i.e. plant resulting in a noise level in excess of 69dbAmax - measured at the sensitive receptor) to be undertaken during the bird overwintering period (i.e. October to March inclusive). Note: The sensitive receptor is the nearest point of the SPA or any SPA supporting habitat (e.g. high tide roosting site).

With the above mitigation in place, Natural England has no objection to this application.

**Officer Comment:** Condition imposed on related outline planning permission.

**Biodiversity Mitigation and Enhancement Plan:**

Please note we have not assessed the application and associated documents for impacts on protected species. Natural England has published Standing Advice on protected species. Standing Advice is a material consideration in the determination of applications in the same way as any individual response received from Natural England following consultation. If you have any specific questions not covered by our Standing Advice, or have difficulty in applying it to this application please contact us at [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk).

In order for your authority to be assured that the proposal meets the requirements of the standing advice and the additional requirements for biodiversity enhancement as set out in National Planning Policy Framework paragraphs 7, 109 and 118, Natural England recommends that the application is supported by a Biodiversity Mitigation and Enhancement Plan (BMEP) that has been agreed by a Hampshire County Council (HCC) Ecologist.

It is noted that no ecological assessment has been submitted with the application and we would recommend that the HCC Ecologist is consulted in the first instance to identify the scope of the BMEP required for this development.

Provided an HCC approved BMEP is received and secured by any permission then your authority may be satisfied that it will have met its duties under Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 which states that 'Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity', and in relation to European Protected Species Regulation 9(3) of The Conservation of Habitats & Species Regulations 2017.

Natural England recommends that biodiversity enhancements are included in the development proposals, such as planting native trees including fruit trees within gardens, native hedges and the provision of bird (eg house martin, swift) and bat boxes of a design that is incorporated into the fabric the new buildings.

Please note that provided the HCC Ecologists' are satisfied with the submitted BMEP and the full implementation of the plan is secured by any permission then no further consultation with Natural England on this aspect of the proposal is required. In the event that a BMEP cannot be agreed with the applicant then Natural England should be re-consulted on the proposals so that we can reconsider our advice.

#### **Natural England Government Team**

No response received to Habitat Regulations Assessment and Appropriate Assessment sent to them by LPA on 4th August 2020

## **6 Community Involvement**

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 20

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 1

| <b>Comment</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>Officer Comment</b>                                                                                                   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| <p>While I welcome this attempt to implement conditions 2 and 3 of the Planning Permission APP/18/01262, there are a number of problems with the proposal, specifically:</p> <p>a) Proposal to use machinery during the works</p> <p>The Wildlife Protection Habitat Enhancement Report contemplates either hand digging, or digging with a long arm digger, in the sensitive area close to the water's edge. The Method Statement prepared by Aquamaintain merely mentions (Clause 2.6) that a 3T excavator will be used to grade the banks where necessary. Given</p> | <p>The application has been considered by the County Ecologist in relation to the proposed works - see part 7 below.</p> |

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| <p>the amount of spoil which has been pushed into the stream area, significant regrading is required and this should be done in a way which seeks to protect the area appropriately.</p> <p>b) Habitat protection</p> <p>There is documented and photographic evidence of the presence of water voles on the site before spoil was pushed into the stream. While the damage to the site may have resulted in the destruction of the water voles, hopefully some will have migrated to the West Bank of the stream and survived. The proposed installation of the hazel faggot toe edge (Clause 2.4) and the woody debris (Clause 2.5) will need to be undertaken in such a way as to ensure minimal disturbance to the habitat in the stream. At present the method statement mentions the use of articulated vehicles, sledge hammers, hydraulic post rammers, high tensile wire, etc. The contractor should be required to minimise disturbance to the habitat and amend the method statement accordingly.</p> <p>c) Community Infrastructure Levy</p> <p>A planning application related to this one (APP/18/01262), in connection with the same site and applicant, has outstanding Community Infrastructure Levy payments and penalties for late payments (last correspondence 24th June 2020). It would seem appropriate that any decision on this application must be subject to payment in full of all CIL outstanding in connection with this development.</p> <p>The remediation of the damage caused to this sensitive habitat was supposed to have been completed (with an appropriate report submitted to the Planning Authority) by mid-October 2019. The significant delay to carrying out these works is very concerning. Habitat destruction, followed by long delays in remediation, appears to be part of a pattern of neglect of this important site. I would like to urge the Planning Authority enforcement officials to consider intensive monitoring and prompt enforcement of any slippage to these remediation works.</p> | <p>CIL payments are not related to this application however it is understood that CIL payments have now been received.</p> |
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## **17 Planning Considerations**

7.1 Having regard to the relevant policies of the development plan it is considered that the main issues arising from this application are:

- (i) Principle of development
- (ii) Impact upon the character and appearance of the area
- (iii) Impact upon residential amenity
- (iv) Ecological requirements

(i) Principle of development

The principle of residential development at the site has been established by planning permissions APP/18/00380 (outline) and APP/18/01262 (Reserved Matters). This application is a Section 73 Application seeking to vary conditions 2 (List of approved plans/documents) and 3 (Ecological Requirements).

S73 (2) of the Act states: *On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted.*

Planning Guidance 'Flexible options for planning permissions' sets out requirements in relation to Section 73 planning applications. The granting of a S73 application results in the granting of a new planning permission. A decision notice describing the new permission should clearly express that it is made under section 73. It should set out all of the conditions imposed on the new permission, and, for the purpose of clarity restate the conditions imposed on earlier permissions that continue to have effect.

(ii) Impact upon the character and appearance of the area

The proposals relate to the ecological works to the riverbank and seek to address damage caused to the habitat and appearance of the river. It is considered that the revised proposals should allow for the replacement/ re-instatement of the habitat and improve the visual amenities and character of the area previously damaged by works to the river bank.

(iii) Impact upon residential amenity

Whilst there would be some construction/planting phase disturbance, it is not considered that the works would cause harm to the residential amenities of the area.

(iv) Ecological requirements

It is considered that the proposals need to address and mitigate the impacts that have taken place to this sensitive riverside environment which links to the Harbour environments beyond and provides habitats for protected species.

The County Ecologist has confirmed that the amended method statement including planting list for native marginal plant species is acceptable. A condition has been recommended to retain those elements not covered by the new Method Statement i.e. those ecological mitigation, compensation and enhancement measures detailed within the previously-submitted Wildlife Protection and Habitat Enhancement Scheme (David Leach, February 2019) as well as the slightly amended planting details provided.

Subject to the imposition of a suitable new conditions it is considered that the proposed variations of condition can be supported.

The consideration of this S73 application also requires Habitats Regulations Assessment/Appropriate Assessment consideration in consultation with Natural England.

The Council has conducted a Habitats Regulations Assessment (HRA) of the proposed development under Regulation 63 of The Conservation of Habitats and Species Regulations 2017 (as amended). The Council's assessment as competent Authority under those regulations is included in the case file. The screening under Regulation 63(1)(a) found that, when considering the impact of the S73 changes in the context of the project approved under APP/18/00380 (outline) and APP/18/01262 (reserved matters) which are still extant, there was not likely to be a significant effect on any Solent European Sites (as defined in the application's HRA) due to any increase in recreation or decrease in water quality that might result from the development. Contributions to mitigate increased recreational pressure on the coast have previously been secured.

The HRA was subject to consultation with Natural England as the appropriate nature conservation body under Regulation 63(3) who have chosen not to make any representations within the standard 21-day period for consultation. The HRA has therefore been able to be completed on this basis and concludes that the proposal would not lead to a likely significant effect on European site integrity.

## **8 Conclusion**

In conclusion, it is considered that the application is acceptable in terms of ecological and other impacts and can be supported subject to the imposition of appropriate conditions.

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## **9 RECOMMENDATION:**

That the Head of Planning be authorised to **GRANT PERMISSION** for application APP/20/00289 subject to the following conditions

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans:

Wildlife Protection and Habitat Enhancement Scheme D.V. Leach February 2019

Aquamaintain Method Statement received 6th April 2020

Aquamaintain Ltd Risk Assessment Forms dated 28th November 2019

River Bank Works Rev 01 dated 5th December 2019

Site Plan Drawing No. 200 Rev G

Plot 1 Plans and Elevations Drawing No. 201 Rev B

Plot 2 Plans and Elevations Drawing No. 202 Rev A

Plot 3 Plans and Elevations Drawing No. 203 Rev D

Garage Floor Plan and Elevations Drawing No. 204 Rev A

Bat Survey - Emergence and Re-Entry

**Reason:** - To ensure provision of a satisfactory development.

- 2 Development shall proceed in strict accordance with the submitted Method Statement (Aquamaintain, April 2020) unless otherwise agreed in writing by the Local Planning Authority. A written report detailing the implementation of the habitat enhancement measures for the Langstone Brook shall be submitted to the Local Planning Authority within 3 months of the date of this permission, unless otherwise agreed in writing by the Local Planning Authority. The report shall include evidence that the required sensitive landscaping actions have been carried out as described within landscape drawing 200 revision G (M2 Architecture, 2 April 2020) and the Method Statement (Aquamaintain, April 2020). The report shall include details (timescales, actions and responsibilities) of ongoing monitoring and maintenance of repaired habitats. In addition, all works not related to riverbank restoration shall proceed in accordance with the submitted Wildlife Protection and Habitat Enhancement Scheme (David Leach, February 2019).

**Reason:** to protect and enhance biodiversity in accordance with the NERC Act 2006, the National Planning Policy Framework and Policy CS11 of the Havant Borough Core Strategy March 2011.

- 3 The works to the bankside shall be carried out by competent contractors under the supervision of a suitably qualified ecologist and in full accordance with the details described within landscape drawing 200 revision G (M2 Architecture, 2 April 2020) the Method Statement (Aquamaintain, April 2020). In addition, all works not related to riverbank shall be carried out by competent contractors under the supervision of a suitably qualified ecologist in full accordance with the Wildlife Protection and Habitat Enhancement Scheme (David Leach, February 2019).

**Reason:** To ensure that the works are carried out to an appropriate standard to protect the sites ecological interests in accordance with the NERC Act 2006, National Planning Policy Framework and Policy CS11 of the Havant Borough Local Plan (Core Strategy) 2011.

- 4 Notwithstanding the provisions of any Town and Country Planning (General Permitted Development) Order 2015 as amended, prior to first occupation of the dwellings hereby permitted all the bathroom and en-suite windows for all the plots shall be fitted with, to a height of no less than 1.7m above finished floor level textured glass which obscuration level is no less than Level 4 of the Pilkington Texture Glass scale (or equivalent) and retained as such thereafter.

**Reason:** In the interests of the amenities of the occupiers of nearby properties and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.