
Meeting: Development Management Committee
Date: 22 October 2014
Subject: Partial non-compliance with Planning Condition
Application ref: CB/13/03597/OUT
Land at French's Avenue, Dunstable
Report of: Director of Regeneration and Business
Summary: To withhold enforcement of the condition as set out provided alternative specified actions are complied with.

Advising Officer: Director of Regeneration and Business
Contact Officer: John Spurgeon, Principal Planning Officer, Major Applications Team
(Tel: 0300 300 5304)
Public/Exempt: Public
Wards Affected: Dunstable – Northfields
Function of: Council

CORPORATE IMPLICATIONS

Council Priorities:

To ensure the protection of the countryside while managing growth.

Financial:

1. None

Legal:

2. The proposed amended survey works would be compliant with relevant legislation pertaining to protected species.

Risk Management:

3. Insofar as ground would not be disturbed there is negligible risk to the Council of pollution pathways being activated.

Staffing (including Trades Unions):

4. Not Applicable.

Equalities/Human Rights:

5. None

Public Health

6. None as the survey works would be to undisturbed ground.

Community Safety:

7. Part of the land is now owned by CBC but does not have formal public access. Any survey works on it would be done so as to minimise community safety implications. The remainder of the land is fenced.

Sustainability:

8. Would continue to deal sustainably with protected species..

Procurement:

9. Not applicable.

RECOMMENDATION:

The Committee is asked to agree that the Local Planning Authority would not enforce the submission, before development takes place, of a scheme required under condition 5 of planning permission CB/13/03597 based on an up-to-date reptile survey provided:

- (a) All materials arising from the demolition of all buildings and structures on Parcel A are removed immediately from site,
- (b) In the event that (a) is not complied with, an appropriate survey has been carried out of the pile of such materials before the pile is disturbed, and if reptiles are found, the pile is not disturbed unless and until the approved scheme permits its disturbance, and
- (c) The scheme is submitted to the Local Planning Authority by 31st May 2015.

Background

10. Outline planning permission CB/13/03597/OUT, issued on 3rd April 2014, permitted demolition of existing buildings on land at French's Avenue, Dunstable, and redevelopment to provide up to 23,500m² of residential floorspace including flexibility for up to 100m² of A1/A3 retail floorspace with associated vehicular access and landscaping enhancements. The site is in two parts: Parcel A is the former factory area and is permitted for residential / retail development; Parcel B is open land to the rear and has the status of County Wildlife Site, notably for its species rich chalk grassland. Parcel B is to be used under the permission as an open space accessible from the development.

11. Certain pre-commencement conditions have been imposed on the outline permission. One of these is condition 5 which relates to protection of reptiles. Condition 5 reads:

No development shall take place until a scheme, based on an up-to-date reptile survey, to inform the future management of the site and protection measures, has been submitted to and approved in writing by the Local Planning Authority. The scheme as approved shall be implemented in full in accordance with a timetable to be agreed in writing by the Local Planning Authority.

Reason: To enable proper consideration of the impact of the development on the contribution of reptile interests to the amenity of the area.

The condition was intended to inform any necessary mitigation and guide future management of Parcel B. The wording of this condition makes it clear that the scheme has to be submitted and approved before development commences. Therefore, the reptile survey, on which it is based, also has to take place (ie completed) before development commences.

12. The survey can commence this October (subject to weather conditions) but, given the number of survey days required, it is unlikely that it can be concluded in appropriate weather conditions before the main development on Parcel A commences early next year. The intending developer therefore asks if the terms of the condition could be varied. Having only recently reached the stage where access can be made available for conducting the survey, a planning application to vary the condition would therefore be determined much later than the October start. He is prepared to be governed by the minuted resolution of this Committee.
13. The Council's Ecologist accepts that no reptiles would be hibernating on Parcel A unless piles of materials from the demolition of the building remained on the site. Therefore she would accept development on Parcel A at any time provided all demolished materials were removed from site directly. If they remained (for use as hardcore for example) the survey should revisit the piles before they are removed. No development on Parcel B needs to take place until well into next year. Therefore the Ecologist recommends that the survey and scheme be submitted to the Local Planning Authority no later than the end of May 2015. In such terms, it would be acceptable not to enforce the strict terms of the condition.