

REPORT TO THE NORTHERN AREA PLANNING COMMITTEE

Date of Meeting	23 rd April 2014
Application Number	13/05668/VAR
Site Address	Bassett Down Golf Club Hay Lane Bassett Down Swindon SN4 9QP
Proposal	Variation of Condition 13 of 09/00079/COU
Applicant	Mr & Mrs Nutland
Town/Parish Council	LYDIARD TREGOZ
Ward	WOOTTON BASSETT EAST
Grid Ref	411031 180833
Type of application	Full Planning
Case Officer	Simon Smith

Reason for the application being considered by Committee

Under the Scheme of Delegation Specific to Planning, this application to vary the terms of a planning condition has been called to the Northern Area Committee by Councillor Groom to allow for consideration of the following issues: the impact of the altered condition upon the environment and highway.

1. Purpose of Report

To consider the above application and to recommend that condition 13 to planning permission 09/00079/COU BE VARIED.

The Lydiard Tregoz Parish Council object to the application.

Two (2) letters of objection have been received from separate households.

2. Report Summary

Submitted under s73 of the Town and Country Planning Act 1990 (As Amended), this application seeks a variation to condition 13 of planning permission 09/00079/COU.

Development, which an application under s.73 seeks to amend, will by definition, have already been judged to be acceptable in principle at an earlier date and a reconsideration of the acceptability of the proposal a whole is not normally necessary. Indeed, such an application should be determined in accordance with s.38(6) of the Planning and Compulsory Purchase Act 2004. Local Planning Authorities should, in making their

decisions, focus their attention on national or local policies or other material considerations which may have changed significantly since the original grant of permission, as well as the changes sought.

Specifically, consideration should focus upon the following:

- The meaning of condition 13 to permission 09/00079/COU
- The proposed extension of time allowed for completion of development
- Balance between duration of activity and impact of numbers of lorries on the road.
- Other matters

3. Site Description

The application relates to an existing golf driving range facility accessed from Hay Lane, which leads directly to junction 16 of the M4, some 1.0km to the north. The driving range is part of a consented 18 hole golf course complex, complete with clubhouse and parking area.

In planning policy terms, the entire site is part of the open countryside and although not covered by any specific landscape designation, the site can be plainly seen from the Salthrop escarpment to the North Wessex Downs AONB to the south.

4. Planning History

N/03/00898/SCR	Nine hole pay and play golf course (screening opinion)
N/03/02126/FUL	Change of use from agricultural to 9 hole golf course together with driving range and office buildings and parking area
N/04/03250/FUL	Alterations to existing vehicular access
N/04/03251/FUL	Proposed 20 bay covered driving range, kiosk with ancillary sales area, ball wash, lobby and toilets (together with associated parking area) (revision to 03.02126.FUL)
N/05/02327/S73A	Illumination of Ball Landing Area (Variation of Condition 6 of Planning Permission 04/03251/FUL)
N/06/02887/FCM	Re-profiling Of Golf Driving Range
N/07/07015/FCM	Re-Profiling Operation Involving Inert Waste (Subsoils)
N/08/02424/S73A	Illumination of Ball Landing Area (Variation of Condition 06 of Planning Permission 04/03251/FUL)
N/09/00079/COU	Change of Use of Agricultural Land to Golf Course
N/10/02321/S73A	Illumination of Ball Landing Area (Removal of Condition 1 of Planning Permission 08/02424/S73A)
N/10/04262/HRN	Removal of Hedgerow
N/11/02790/S73A	Variation of Condition 6 of N/10/02321/S73A, Relating to Light Measurement
N/11/01663/AGN	Construction of a Farm Track

4. The Proposal

This application is submitted under s73A of The Town and Country Planning Act 1990 seeking to vary the terms of condition 06 attached to planning permission 09/00079/COU. Condition 13 states:

Written notification of the date of commencement shall be sent to the Local Planning Authority within seven days of such commencement. In complete accordance with the submitted details, the deposit of waste and all earthworks required to form the approved development shall be completed no later than 30 months after the date of commencement confirmed by this condition. Within a period of a further 12 months (i) all plant and machinery shall be removed from the site (except which the local planning authority agrees in writing is required for future maintenance of the site); and (ii) the temporary access road shall be closed and the restored in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.

Reason: To enable the Council to control the development and monitor the site to ensure compliance with the planning permission.

Section 73A of the Act specifically gives provision for a formal application to be submitted to the Local Planning Authority which seeks to vary or remove a condition imposed on a planning permission.

5. Planning Policy

Policies C3, NE15, NE18 of the adopted North Wiltshire Local Plan 2011

National Planning Policy Framework.

6. Consultations

Lydiard Tregoz Parish Council – Object. See no reason to extend time for construction.

Council Highway Officer –

In light of the comments received from Swindon Borough Council and the fact that the road is not maintained by WC, raises no objections to the requested extension in time, subject to conditions.

Swindon Borough Council (in capacity of Local Highway Authority) –

“Swindon Borough Council would not raise an objection in principle to the variation of Condition 13 of permission N/09/00079/COU, we would comment as follows:

- Correspondence from Mr Bowley advises that in the time since the granting of planning permission, 90,000m³ of the required 282,300m³ on inert waste material has been transported to the site, leaving 192,300m³ to be imported. However, the slower than expected progress appears to be as a result of a combination of the financial down turn and the appointed contractor. We note that an alternative contractor has now been appointed and that this in turn had led to an increase in the*

amount of material being transported to the site. We therefore consider an extension of 4 years to be excessive and consider an extension of 2 years will be sufficient for the importing of the remaining inert waste material to be completed;

- We would welcome the offer in Mr Bowley's letter of 20 January 2014 for an additional restriction preventing access to the site at weekends, provided that the maximum permitted lorry movements of 141 heavy goods vehicle movements to and from the site on the remaining working days (Monday to Friday excluding Bank or Public Holidays) as permitted by Condition 14 to the original planning permission was not exceeded;*
- It appears as though Swindon Borough Council was not consulted on the original planning application. We would therefore wish to take this opportunity to protect the public highway and associated drainage under our control from any damage that may be caused by the continued transportation of inert waste material to the site. We would expect the developer to be responsible for reinstating the wearing course, verges, ditches, watercourses and drainage (including culvert(s)) to their condition prior to the commencement of the importation of material to the site, at their expense. Details of the reinstatement should be submitted to and agreed in writing by Swindon Borough Council; and*
- A site visit was undertaken this morning and on both approaches to the access to the site being used to import material, temporary MUD ON ROAD signs have been erected in the verge. More importantly there is evidence of mud on the public highway and no evidence of wheel washing facilities on site. This suggests that the contractor is not complying with the approved Construction Management Plan and they should be informed of this as a matter of urgency."*

Highways Agency – No objection.

Environment Agency – No objection. Confirmation received that the Permit for the deposition of waste materials granted by the EA for this site does specify the acceptance and checking of material (under condition 2.3 of the Permit). It is also clarified that the Permit has now been "transferred" to the current operator (Earthline). Accordingly, the EA have confirmed that this would effectively discharge the original imposed planning condition which required the quality control of waste materials received at the site.

(Note: It is recommended that the original condition be modified so as to make reference to the Environmental Permit already granted by the EA. See condition 05.)

Council Minerals and Waste Team –

No comments. Notes that the consideration is a matter of weighing the impacts of traffic, noise disturbance etc. against the benefits of finishing the development earlier rather than later.

Council Ecologist -

"The site supports a population of great crested newt and the original proposals were permitted on the basis of an agreed mitigation strategy. That strategy would have been approved on the basis of a temporary impact, with habitats restored within the approved 30 month life span of the original permission. I cannot currently access the documentation for that permission on the website, and it is not clear from the submitted information which areas of the site are yet completed / under construction / still developed. The mitigation strategy

for the site will need to be updated, confirming the phasing for the site; I would suggest that given the considerable proposed extension to the permission impacts will need to be mitigation by phasing and prioritising the restoration of areas closest to breeding ponds earlier in the construction period, preferably during winter periods. I would therefore request that the mitigation strategy for the site be revised, resubmitted and approved before consenting the extension to the permission.”

7. Publicity

Two (2) letters of objection received. Note: multiple letters from same objector household. Main issues raised:

- Application is not valid.
- Road and verge is being damaged as a result of the HGVs accessing the site.
- HGVs shake foundations of houses they pass, causing damage..
- Initial application presented a knowing understatement of the length of time it would take to complete – if presented in the manner now being done so, greater objection would have been generated.
- Development is merely a huge tipping exercise
- Noise and disturbance from traffic movements cause an amenity issue and living conditions of neighbours are intolerable.
- Drainage/culvert of road has been damaged as a result of vehicles.

8. Planning Considerations

The meaning of condition 13 to permission 09/00079/COU

Condition 13 was imposed upon the 2009 permission to ensure the Council would retain a degree of control and certainty over the duration of the construction of the golf course, which, after all, does involve the importation of a substantial amount of earth. Indeed, it was anticipated at the time of the application being determined that development would necessitate the importation of some 282,000m³ of inert (stable, non-hazardous) fill material.

As required by condition 13, in June 2011 the Council received notification of the intention to commence works, meaning a projected completion date of December 2013 (ie. 30 months later).

However, it has been suggested by the applicant that the rate of progress was slower than anticipated, with only some 30,000m³ of material having being brought to the site by June 2013. Since that time, there has been an effort to increase the rate of importation, with a total of 90,000m³ of the required 282,300m³ on inert waste material having been transported to the site, leaving 192,300m³ to be imported.

It is therefore evident that the golf course will not be complete before the originally envisaged 30 months allowed by the 2009 permission. Indeed, that 30 month period has already expired, being December 2013.

The applicant's agent suggests that at present, the new golf course is about one third complete.

The proposed extension of time allowed for completion of development

Some 192,300m³ of inert fill remains to be imported in order to finish the consented golf course. The slower than expected progress appears to be as a result of a combination of the financial down turn and the appointed contractor.

Following the appointment of a different contractor, the applicant estimates the remaining importation will require an additional 48 months (ie. no later than 31st December 2017), allowing for any potential fluctuations in the building sector, being the main source of such inert fill.

Following consideration of the comments of Swindon Borough Council (as the authority responsible for the upkeep of the B4005 Hay Lane, the main route of construction traffic from the M4), the applicant has signalled their willingness to consider an additional 3 year time frame, as opposed to the 4 years applied for, together with a commitment to not tip on Saturdays.

The application does not seek any change to the total quantum of material permitted in 2009, that being 282,300m³.

The application does not seek any change to the Construction management Plan agreed under conditions 05 and 06 of the 2009 permission, which covers matters such as delivery hours, the routing of construction traffic etc.

Equally, the application does not seek any alteration to the ceiling of lorry movements set by condition 14 of the 2009 planning permission, that being 141 HGV movements to and from the site each day.

Balance between duration of activity and impact of numbers of lorries on the road.

The application requires a consideration of the trade-off between the duration of the construction phase and attendant impact associated with the numbers of lorries using Hay Lane. A shorter construction period naturally resulting in more intensive activity and frequency of lorry movements and, perhaps, greater impact upon living conditions of local residents and damage to the road surface. Equally, a longer construction period may be regarded as extending those impacts over a longer period of time.

Clearly, if the development is continued over the period to the end of 2017, the average number of lorries per day would be notably less than the maximum allowed by condition 14 of the 2009 permission. A more intensive development will obviously increase that daily number of lorries. The applicant does, however, suggest that this latter scenario can still be achieved within the 141 daily limit set by condition 14.

The applicant has suggested that the tipping rate during autumn 2013 was resulting in an average of around 45 lorry visits (90 movements) per day to the site, with no set pattern to the timing of these movements through the day. Objectors to the application have, however, suggested that vehicle numbers have exceeded this, thereby contravening the terms set out within the agreed Construction management Plan.

It is advised that it would be unreasonable to refuse to extend the period of time to complete the development, since that would also effectively remove the planning permission for the golf course in its entirety. Whilst the additional 4 years applied for would result in the maximum reduction in vehicle movements, it would also extend the construction period by 25%. As a compromise between competing factors, an extension of 3 years is considered reasonable.

Damage to Hay Lane

Local residents have suggested that the development has resulted in damage to the B4005 public highway and in particular, damage to verges and drainage culverts, causing recent surface water flooding.

Whilst the B4005 Hay Lane may well be potholed and in need of repair like many other roads, there is, unfortunately, no available evidence that the permitted development has been the direct cause of such damage. Nevertheless, Swindon BC as the authority responsible for the upkeep of the B4005 have identified that they will certainly expect the developer to be responsible for reinstating the wearing course, verges, ditches, watercourses and drainage (including culvert(s)) to their condition prior to the commencement of the importation of material to the site.

In the context of an application that seeks an extension to the period of time for the completion of a development that necessitates substantial amount of HGV traffic, in the event of a new planning permission being granted, it is considered reasonable to impose an additional condition that requires a pre and post construction survey of the B4005 between the M4 junction and the site entrance together with a scheme for the repair of any damage identified and attributable to the construction of the development, to be carried out at the expense of the applicant.

Other matters

Swindon Borough Council have noted in their comments that during a site visit to assess the access to the site being used to import material, temporary MUD ON ROAD signs have been erected in the verge. There was also evidence of mud of the public highway and no evidence of wheel washing facilities on site, suggesting that the contractor is not complying with the approved Construction Management Plan under conditions 05 and 06 of the 2009 permission. If this is the case, it should be regarded as a separate matter to the consideration of this planning application and pursued as a breach of condition.

The Council's Ecologist has observed that the lengthened time for completion of development may, to some extent, invalidate the commitments set out within the approved Landscape and Ecological Management Plan (condition 04 of the 2009 permission). The Ecologist therefore suggests that the strategy for the site should be updated, confirming the new phasing for the site and prioritising the restoration of areas closest to breeding ponds earlier in the construction period, preferably during winter periods.

The previous Landscape and Ecological Management Plan was submitted and agreed prior to the commencement of development. Since development has already commenced and is well under way under the auspices of the agreed Management Plan, it is not thought reasonable to require an updated Plan before the determination of this application, as requested by the Ecologist. Rather, it is thought logical to require the submission of an updated Landscape and Ecological Management Plan within a relatively short timeframe after the grant of any new planning permission. Condition 04 of the permission should be amended appropriately.

10. Conclusion

It is considered that the request to extend the time limit for completion of the permitted golf course is reasonable. The applicant has agreed to a reduction in that requested extension

of time to 3 years (rather than the 4 years requested) and it is considered that such a time frame offers the best compromise between intensity of lorry movements and duration of overall construction phase. The offer of the applicant to also amend condition 10 of the 2009 permission relating to the hours of operation to construct the golf course to exclude Saturdays is welcomed, and should be regarded as a material planning consideration in determining this application.

It is concluded that the wording of condition 13 may be varied to ensure the deposit of waste and all earthworks on the site is completed no later than 36 months (3 years) after the 31st December 2013 date originally specified for completion, that being 31st December 2016.

RECOMMENDATION:

That planning permission be GRANTED subject to conditions imposed under 09/00079/COU together with minor amendments to wording of conditions so as to reflect the fact that development has already commenced, including conditions 03 (Ecology), 08 (hours of operation), 12 (duration of construction phase) and additional condition 14 (survey of highway damage), to read as follows :

- 01 All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

- 02 Development shall take place in complete accordance with the approved surface water drainage scheme for the site (prepared by DJP Consulting Engineers, April 2009), which was based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development. In particular, run off from the site following development to not exceed Greenfield rates calculated on page 2 of the letter from DJP Structural and Civil Engineers dated 21 October 2009

Reason: To prevent the increased risk of flooding, to improve and protect water quality, improve habitat and amenity and ensure future maintenance of these.

- 03 Within 3 months of the date of this planning permission, an updated Landscape and Ecological Management Plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas shall be submitted to and approved in writing by the Local Planning authority. The Landscape Management Plan shall be carried out as approved and any subsequent variations shall be agreed in writing by the Local Planning authority. The Scheme shall include the following elements:

- a. design details of all water features to ensure they are designed to maximise the benefits for biodiversity. Lakes should have significant areas of shallows and be planted with native wetland plants
- b. suitably sized buffer strips of vegetation left between the water features and the main fairways. These strips should be left to develop with limited management. They will provide protection for the water features from intensive management such as fertilise spraying
- c. drainage channels and SUDS should be designed to maximise their benefits for biodiversity
- d. chemical treatments for green/fairways should be limited and sufficient distances from water features, should always be maintained during these operations to prevent them being impacted by direct application or spray drift.

Reason: To ensure protection of wildlife and supporting habitat and secure opportunities for the enhancement of the nature conservation value of the site in line with national planning policy

- 04 The development hereby permitted shall be carried out in complete accordance with the approved Construction and Environmental Management Plan (prepared by MJ Church, dated 13th July 2011).

Reason: To minimise the impact on construction vehicles on Junction 16 of the M4

- 05 The importation of inert fill to the site shall take place in complete accordance with the Environmental Permit (permit number: EPR/AB3804CL), which transferred to the current operator (Earthline) by the Environment Agency on 13th October 2013.

Reason: To safeguard the amenities of local residents and the wider environment during the construction phase.

- 06 No materials other than inert waste and topsoil shall be imported into and deposited on the site.

Reason: To control the type of waste imported.

- 07 There shall be no screening or processing of inert waste material on the site at any time.

Reason: To safeguard the amenities of local residents and the wider environment during the construction phase.

- 08 No operations relating the formation of the course, including HGVs entering and leaving the site, shall take place except between the following times:

07.30 – 17.00 Mondays to Fridays

No operations related to the formation of the course shall take place on Saturdays, Sundays, Bank or Public Holidays.

Reason: To safeguard the amenities of local residents and the wider environment during the construction phase.

- 09 All vehicles, plant and machinery operated within the site shall be maintained in accordance with the manufacturer's specification at all times and shall be fitted with, and use, effective silencers. No reversing beepers or other means of warning of reversing vehicles shall be fixed to, or used on, any mobile site plant other than white noise alarms or beepers where noise levels adjust automatically to surrounding noise levels.

Reason: To safeguard the amenities of local residents and the wider environment during the construction phase.

- 10 During the permitted working hours the freefield equivalent continuous noise level (LAeq, 1 hour) for the period due to normal waste importing and depositing operations shall not exceed 55dB as recorded at the boundary of any inhabited property.

Reason: To safeguard the amenities of local residents and the wider environment during the construction phase

- 11 The deposit of waste and all earthworks required to form the approved development shall be completed no later than 31st December 2016. Within a period of a further 12 months (i) all plant and machinery shall be removed from the site (except which the local planning authority agrees in writing is required for future maintenance of the site); and (ii) the temporary access road shall be closed and the restored in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.

Reason: To enable the Council to control the development and monitor the site to ensure compliance with the planning permission.

- 12 In complete accordance with the submitted details, no more than 141 heavy goods vehicle movements to and from the site shall occur on any working day.

Reason: To limit the volumes of traffic in the interests of the amenity of residents on and near the approaches to the site.

- 13 Within 2 months of the date of this planning permission, a photographic survey of Hay Lane between the M4 junction and the site entrance shall be carried out. Upon completion of the construction phases, a post construction survey shall be carried out at the same locations. Details and results of both before and after survey shall have been submitted to the Local Planning Authority (who will liaise with Swindon Borough Council as the Highway Authority) within 3 months of the first use or occupation of the development. Those submitted details and results shall be accompanied by a plan and timing schedule for the repair of any damage identified and attributable to the construction of the development, to be carried out at the expense of the applicant, which shall have been agreed in writing with the Local Planning Authority beforehand.

Reason: So as to secure a scheme for the repair of the public highway following completion of substantive construction works.

