

Application No: 21/1182/FH/CON

Location of Site: Princes Parade Promenade
Princes Parade
Hythe CT21 6EQ

Development: Approval of details pursuant to conditions 15 - Preliminary Ecological Appraisal (Site Clearance Stage only), 16 - Ecological Method Statement (Phase 1 only) and 17 - Habitat Creation Plan (Phase 1 only) of Planning Application Y17/1042/SH (Hybrid application accompanied by an Environmental Statement for the development of land at Princes Parade)

Applicant: Folkestone & Hythe District Council

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SUMMARY

This report considers whether approval should be given for the submitted details in pursuance of conditions 15 (site clearance stage), 16 (phase 1) and 17 (phase 1). The submitted Ecological Method Statement details how the scheme is to comply with these conditions and safeguard protected species on site. This reports incorporates advice from Kent County Council's Ecological Advice Service who have confirmed that the submitted details are acceptable and as such the application can be approved.

RECOMMENDATION:

That conditions approval submission be approved in accordance with the details and documents provided. That the informatives included at the end of the report be attached to the approval, and authorisation is given to the Chief Planning Officer to amend the wording of these/ include additional informatives as he feels is appropriate.

1. INTRODUCTION

1.1. The application is reported to Committee because it forms part of a larger development that the Council has a substantial interest in.

2. SITE AND SURROUNDINGS

- 2.1 The application site is located in a prominent position on the coast, immediately to the south of the Royal Military Canal (RMC), which is a Scheduled Monument (SM) and Local Wildlife Site (LWS). Beyond the RMC to the north is the residential area of Seabrook, focussed along the A259 and to the south is Princes Parade, the sea wall promenade and the beach. To the west is the Hythe Imperial golf course and Hotel Imperial with the recent residential development to the rear. To the east is the recently completed block of apartments, Olivia Court, with a petrol filling station and restaurant beyond.
- 2.2 At the eastern end of the site is a small visitors' car park, children's play area and temporary accommodation for the Seabrook Canoe Centre. Public Bridleway HB83 runs along the northern extent of the application boundary/southern side of the RMC, with the National Cycle Route 2 Bridleway along the southern edge, on the existing promenade.
- 2.3 The majority of the application site is covered in scrub vegetation and is relatively flat, although the former use as a waste disposal site and the past dredging of the canal has raised the ground level by approximately 3.5 metres above the adjacent canal and golf course and resulted in widespread ground contamination. The main promenade and road sit at approximately +6.8 metres (AOD) and the site ranges between +6.5 metres and +8.0 metres AOD. The site drops sharply along the northern boundary, forming a vegetated slope where it meets the canal tow path (HB83). The site covers 10.07 Ha of land owned by the applicant, Folkestone and Hythe District Council.
- 2.4 Access to the interior of the site is heavily curtailed by the vegetation and lack of paths, with the main access across the centre of the site being via the existing path leading to the Seaview Bridge connecting to Seabrook Road. A similar path to the Seabrook Lodge Bridge exists at the western end of the application site.
- 2.5 The site is located approximately 260 metres to the south and south-east of the Kent Downs Area of Outstanding Natural Beauty, which extends as far as Cliff Road on the hillside above.
- 2.6 A site location plan is attached to this report as **Appendix 1**.

3. PROPOSAL

- 3.1 Approval is sought for details pursuant to conditions 15 (Preliminary Ecological Appraisal), 16 (Ecological Method Statement) and 17 (Habitat Creation Plan) of Planning Application Y17/1042/SH which was a hybrid application for the development of land at Princes Parade. The conditions in question read as follows:

Condition 15: Prior to commencement of the development on each relevant phase or sub-phase relating to the planning permission hereby permitted, a preliminary ecological appraisal (PEA) shall be carried out, the results and recommendations of which shall inform a review/ update of detailed mitigation strategy to be submitted as part of condition 16 of this planning permission.

Condition 16: Prior to commencement of the development hereby permitted (including any ground works, site or vegetation clearance) within any relevant phase or sub-

phase, a detailed Ecological Method Statement (EMS) (informed by the submitted Ecological Mitigation and Enhancement Plan, Lloyd Bore, August 2017; Appendix 4: Scheduled of Environmental Mitigation; Appendix 5: Ecological Mitigation Strategy, Lloyd Bore REF: 3609-LLB-RP-EC-0010-S4-P04 03/07/2018; Appendix 6: Reptile report, Lloyd Bore, REF: 3609-LLB-RP-EC-0011-S4-P01; Appendix 7: Badger Report, Lloyd Bore REF 3609-LLB-RP-EC-0015 | 3609-LLB-RP-EC-0015-S4-P02_ECOLOGY METHOD STATEMENT | PRINCES PARADE, HYTHE (FHDC) 4 STATUS: PLANNING NO. 3609-LLB-RP-EC-0012-S4-P02 03//07/2018) shall be submitted to and approved in writing by the Local Planning Authority. The content of the EMS shall include but not be limited to:

- a) Purpose and objectives for the proposed works, to include the eradication of Japanese knotweed from the site;*
- b) Detailed design(s) and/or working method(s) necessary to achieve stated objectives;*
- c) Extent and location of proposed works, including the identification of a suitable receptor site, shown on appropriate scale maps and plans;*
- d) Timetable for implementation, demonstrating that works are aligned with the proposed phase of construction;*
- e) Persons responsible for implementing the works, including times during construction when specialist ecologists need to be present on site to undertake / oversee works;*
- f) Use of protective fences, exclusion barriers and warning signs;*
- g) Initial aftercare and long-term maintenance (where relevant);*
- h) Disposal of any waste material;*
- i) Interim management plan to ensure habitats created / enhanced as part of the mitigation strategy will be managed appropriately;*
- j) Details of ongoing monitoring.*

The works shall be carried out in accordance with the approved details and retained as required thereafter.

Condition 17: Prior to the commencement of any habitat clearance works in relation to the development hereby permitted, a habitat creation plan shall be submitted to and have been approved in writing by the Local Planning Authority. The habitat creation plan shall clearly set out the habitats which will be created in any relevant phase or sub-phase of the development hereby permitted. The approved plan shall inform the overarching Ecological Method Statement that is required to address Condition 16 of the planning permission and shall be incorporated into that document. Any habitat clearance works in any relevant phase or sub-phase shall only occur in accordance with the approved details.

Condition 15 proposal

- 3.2 This document does not include a full Preliminary Ecological Appraisal (PEA) exercise, as the applicants explain that this would not be appropriate to the stage of the planning process that the project is currently at. However, this document does provide an updated ecological baseline for the site, which is detailed in the Current Ecological Baseline section of the document.
- 3.3 The current ecological baseline reported in the report is based on the previous (2015 - 2016) baseline survey work undertaken by Lloyd Bore, and update site walkover visits and desktop review work undertaken by Lloyd Bore across spring 2021. This document also sets out how and when further update walkovers will be undertaken, and how the findings of these update walkovers will be reported to planning, prior to the

commencement of each phase of the scheme. It is therefore considered that this document adequately addresses the information requirements of Planning Condition 15 in relation to the initial site clearance phase. Further details will therefore be required for phase 1 as well as subsequent phases.

Condition 16 proposal

- 3.4 The submitted details address phase 1 only and therefore subsequent details will be required for future phases. The document also notes the following points
- No evidence of Japanese knotweed presence has been recorded and therefore detailed prescriptions for its eradication have not been included, although precautionary measures in relation to this plant species have been included;
 - Details of long-term maintenance, habitat management and long-term monitoring of habitats are not included because these details are provided in the Landscape and Ecological Management Plan that will be produced to address condition 47.
 - Details of construction stage monitoring in relation to retained on-site habitats are included;
 - Detail relating to waste disposal during the construction stage is not as these measures will be addressed in the Construction Environment Management Plan (CEMP) that is being produced to address condition 26;

Condition 17 proposal

- 3.5 The proposed soft landscaping plans detail the habitat retention and creation proposals that will be implemented on site and are included within the Habitat Retention and Creation Plans section of this document. The details are submitted in relation to phase 1 only.
- 3.6 The following report was submitted by the applicant in support of the proposals:

Ecological Method Statement

This report has also been submitted in respect of conditions 15, 16 and 17 of Y17/1042/H. The report sets out how the scheme addresses the above conditions for the early stages of the development. This includes protecting retained habitats and the adjacent RMC Local Wildlife Site during the construction and post-development; maintain the long-term viability of the local common toad; maintain the long-term viability of the local reptile population; provide mitigation and compensation for impacts upon badger; Maintain the favourable conservation status of the local bat population; and provide new on-site habitats and associated opportunities for invertebrates, amphibians, reptiles, birds, bats, badgers and small mammals. As the scheme progresses, further information on all these conditions will be required to be submitted with the later phases and as such it is not recommended that any of the conditions are fully discharged.

4. RELEVANT PLANNING HISTORY

- 4.1 The relevant planning history for the site is as follows:

Y17/1042/SH Hybrid application accompanied by an Environmental Statement for the development of land at Princes Parade, comprising an outline application (with all matters reserved) for up to 150 residential dwellings (Use Class C3); up to 1,270sqm of commercial uses including hotel use (Use Class C1), retail uses (Use Class A1) and / or restaurant/cafe uses (Use Class A3); hard and soft landscaped open spaces, including children's play facilities; surface parking for vehicles and bicycles; alterations to existing vehicular and pedestrian access and highway layout; site levelling and groundworks; and all necessary supporting infrastructure and services. Full application for a 2,961sqm leisure centre (Use Class D2), including associated parking; open spaces; and children's play facility.

Approved subject to conditions

5. CONSULTATION RESPONSES

5.1 The consultation responses are summarised below.

Consultees

KCC Ecology: No objections to approval of the documents, however further details will be required for later stages of the development and as such the conditions are not discharged. The documents would also have to tie in with future documents on other conditions which have not yet been submitted. Detailed comments have been submitted, but have been included in the main report.

Natural England: No comments to make.

Environment Agency: No objections.

The conditions detailed were not requested by the EA, however the content of the report seems appropriate and covers elements of all 3 biodiversity related conditions we did recommend. Once sufficient information is submitted to discharge conditions 26 (CEMP) and 47 (LMP) it is likely that the outstanding information to fulfil our recommended biodiversity conditions will have been submitted.

Although measures for the eradication of INNS (invasive non-native species) found on site have been specified, it is disappointing that there is no mention of biosecurity measures such as check, clean, dry. These measures are required to reduce the risk of the spread of INNS from the site or the introduction of INNS to the site. This is particularly important as the species present on site is giant hogweed which produces many seeds and is easily spread without good biosecurity measures. It may be that it

would be appropriate to have these measures included in the information to discharge condition 26 (CEMP).

Local Residents Comments

5.2 Local residents are not consulted as part of condition applications as they relate to technical details only.

5.3 Responses are available in full on the planning file on the Council's website:

<https://searchplanapps.folkestone-hythe.gov.uk/online-applications/>

6. RELEVANT PLANNING POLICY

6.1 None. This application relates to the assessment and approval, or refusal, of technical details relating to the approved development at the site. It is not an application for planning permission, where regard must be had to development plan policies and other material considerations. Paragraphs 7.1 and 7.2 below set this out in greater detail.

7. APPRAISAL

7.1 Members should be clear that this is not an application for planning permission. As such, the merits of the approved scheme are not being revisited here. This application seeks approval of technical details relating to the approved scheme and Members' decision must be based wholly on the merits or otherwise of the submitted details, having regard to the expert opinion provided in relation to these details by the Council's consultees.

7.2 Unless there is evidence to demonstrate that the information submitted is incorrect, or that the comments of consultees are incorrect, Members should be wary of reaching a different conclusion. Without sufficient evidence, any decision contrary to the expert advice provided by consultees is challengeable and could be the subject of an award of costs against the Council.

7.3 In light of the above the main issues for consideration are:

- a) Ecology and biodiversity
- b) Drainage
- c) Phasing
- d) Invasive non-native species (INNS)
- e) Conclusions on the condition details

a) Ecology and biodiversity*Protected Species - Reptile and Amphibian Mitigation*

- 7.4 KCC have advised that the proposed reptile and amphibian mitigation which is proposing to use a receptor site directly north of the canal and a cemetery adjacent to Parker Wood is acceptable and that sufficient information has been provided to confirm that the receptor sites can support the population. They highlight that the site managers for both areas must understand that the management for both receptor sites have changed and these areas must be managed as tussocky grassland indefinitely.
- 7.5 They advise that it must only be the slow worm and the common lizard that are translocated to the cemetery receptor site as the aerial photos and OS maps do not indicate that there are any ponds within the surrounding areas. KCC also advise that the ecologist must continuously review the translocation data for both species to ensure that the receptor sites has the capacity to support the populations. Should this be exceeded, KCC advise that the translocation must cease until the carrying capacity can be enhanced or an alternative receptor site is identified.
- 7.6 Habitat monitoring will be carried out in years 1 and 2 and population surveys in year 3, the results of which must inform the need for habitat enhancement works and/or further surveys in subsequent years and as such the recommendations of the monitoring exercise must be implemented. A watching brief will be carried out when clearing all the vegetation to ensure that if any amphibians or reptiles are within the roots they will also be translocated.
- 7.7 KCC continue by stating that parts of the site with retained vegetation would be left unfenced to enable movement of badgers within the site meaning tape/signage should be erected within the site to ensure that workers on site fully understand that the area is not to be accessed or entered during clearance works. The land directly adjacent to retained vegetation must be kept clear of vegetation and not be used as a construction compound. This will minimise the risk of reptiles and amphibians re-establishing within the site.

Protected Species - Bats

- 7.8 KCC are satisfied with the proposed lighting measures detailed within the submission. The details set out within the report must be implemented within the lighting scheme to be submitted as part of Condition 18 which has not yet been submitted. There are therefore no objections to this element of the application.

Breeding birds and other mammals

- 7.9 KCC have assessed the proposed precautionary mitigation and advise that it must be implemented. This involves clearance works taking place during the nesting season (March to mid-September), checks during clearance, construction of a badger sett, a 25m buffer area around any breeding kingfisher or Cetti's warbler nest sites, using protective fencing/ hoarding, wildlife protection measures and measures incorporated into the Construction Management Plan.

Badgers

- 7.10 KCC have reviewed the information submitted as part of this application in addition to the badger licence application which they are also considering.
- 7.11 KCC advise that they are satisfied with the proposed badger mitigation and that the replacement badger sett is located within the foraging/commuting range of the badgers currently using the main sett B. The proposal is to create a badger sett with 4 entrances and 6 chambers and has been designed in a way that will allow badgers to build additional entrances/chambers if required. This is the subject of a separate application.
- 7.12 KCC state that there will be a need for regular monitoring of the sett to ensure that the scrub establishes and, subsequently, the fence and scrub is not damaged by site users. The submitted information has confirmed that, once the sett is in use / established, annual monitoring of the replacement/retained setts will be carried out during the construction period and the year following completion of the works. KCC advise that if any restoration/restorative works are identified they must be carried out immediately and if required the monitoring must continue beyond year one of the operational phase. There will also be a need for regular surveys of the site, during the construction period to ensure that a badger sett is not established elsewhere on site during the works. KCC advise that this must be included within the Construction Management Plan.
- 7.13 KCC also advise that the scrub must be planted on site when the sett is built to ensure there is maximum time for the scrub to establish prior to the development being built on site. The detailed plans for the road must demonstrate that features have been included that will minimise the risk of badgers digging under the road and destabilising it. KCC recommend that this is included within all areas where there is a risk that badgers may dig near or adjacent to the road.

b) Drainage

- 7.14 The planning application as approved proposed a drainage strategy into the canal, however this strategy has now been re-visited and a strategy for draining onto the beach is now being pursued. This update strategy has not been approved yet and a stand-alone detailed planning application is due to be submitted shortly. The following is a summary of the proposed new strategy:
- A Sustainable Drainage System (SuDS) which sub-divides the development site into five separate drainage catchments that manage water run-off from impermeable areas before being discharged at a restricted rate to the adjacent beach via three separate outfalls.
 - The drainage catchments will use permeable paving to drain water run-off either into lined underground storage tanks or a 1m deep layer of lined open graded sub-base to ensure that there is no interaction between any leachates and surface water.
- 7.15 KCC advise that information submitted with the surface water drainage strategy must clearly demonstrate that the proposed drainage strategy will not result in a negative impact on any of the ecological receptors within or adjacent to the site. It should also

ensure that pollutants would not enter the canal post-development through surface run-off. The forthcoming drainage strategy will need to comply with the requirements of this conditions application. If it does not then this application would need to be resubmitted with the revised details included.

c) Phasing

7.16 A phasing plan is requested by way of condition 13 which has not yet been submitted. However, the submitted documents give information on the proposed phasing of the development. If the phasing as set out below was to change, then there would be a need to reconsider the details submitted under this condition and potentially re-apply for approval again. The details given are as follows:

7.17 Phase 1:

- Construction of road
- Realignment of Prince Parade and construction of western car park
- Relocation of existing rising main along realigned Princes Parade
- Provision of new promenade
- Construction of leisure centre and carpark
- Installation of planting along the embankment that forms the northern edge of the approved development site Creation of the Western Open Space linear park.

7.18 Phase 2: The construction of the eastern residential, commercial plot and central open space.

7.19 Phase 3: The construction of the western residential and commercial plot.

d) Invasive non-native species (INNS)

7.20 The EA have commented that although measures for the eradication of INNS found on site have been specified, it is disappointing that there is no mention of biosecurity measures such as check, clean, dry. They explain that these measures are required to reduce the risk of the spread of INNS from the site or the introduction of INNS to the site, particularly as giant hogweed produces many seeds and is easily spread without good biosecurity measures.

7.21 They state that it may be appropriate to have these measures included in the information relating to condition 26 (Construction and Environmental Management Plan). KCC Ecology have agreed with this and as such there are no objections to this approach.

e) Conclusions on the condition details

Condition 15

7.22 Information has been provided detailing that there has been no significant changes within the site since the previous surveys have been carried out. And KCC are satisfied with these conclusions. On the basis of KCC's advice, it is recommended that the details relating to this condition be approved.

Condition 16

7.23 KCC are satisfied that sufficient information has been provided to approve details for this condition for phase 1 only. An interim management plan has not been provided for the retained habitats, these should be included within the Landscape and Ecological Management Plan (LEMP) pursuant to condition 47. On the basis of KCC's advice, it is therefore accepted that this information is not required as part of this application, however a subsequent application for the approval of details in relation to condition 47 will have to ensure it is consistent with the details submitted here.

Condition 17

7.24 KCC advise that for phase 1 of the proposal that they are satisfied that it is appropriate for a high level plan to be submitted to partially approve this condition. However at subsequent phases, KCC advise that detailed landscaping plans must be submitted and they must demonstrate that the habitats detailed within the submitted Ecological Method Statement will be created. On the basis of KCC's advice, the current details are therefore recommended for approval, however further information in relation to this condition will be required for future phases.

8. CONCLUSION

8.1 It is considered that the submitted details are acceptable and that the condition detail application should be approved.

9. BACKGROUND DOCUMENTS

9.1 The consultation responses set out at Section 5.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

10. RECOMMENDATIONS

That approval be granted in accordance with the documents and details submitted with the application.

Informatives:

1. This approval of this condition details application is given on the basis of the Ecological Method Statement by Lloydbore dated May 2021.
2. Please note that this approval relates to the site clearance stage of condition 15, phase 1 of condition 16 and phase 1 of condition 17 only and does not constitute a full discharge of the conditions in question. Further details pursuant to these conditions will be required with subsequent stages.
3. This approval is given on the basis of the forthcoming drainage and current badger sett application being deemed acceptable. If this is not the case and alternative strategies are required, then approval for conditions 15, 16 and 17 at the stages specified here (as stated in informative 2) would be to be re-applied for.

4. The submitted report details that element of these conditions are to be submitted with forthcoming condition detail applications. Should details change in these subsequent applications, the details approved here in the current application would need to be submitted for further approval. These include but may be not limited to:

- Condition 13 - Phasing Plan
- Condition 18 - Lighting Scheme
- Condition 26 - Construction Environment Management Plan (CEMP)
- Condition 47 - Landscape and Ecological Management Plan (LEMP)

Appendix 1 – Site Location Plan