

PLANNING COMMITTEE 21 JULY 2016

15/505213/FULL PART RETROSPECTIVE APPLICATION FOR THE IMPORTATION OF WASTE MATERIAL AND ENGINEERING OPERATIONS TO FORM LANDSCAPED BUNDS, CONSTRUCTION OF A 3 METRE HIGH GABION BASKET STONE WALL, CHANGE OF USE OF LAND AND CONSTRUCTION OF VAN AND HGV LORRY PARK, ACCESS AND CONSTRUCTION OF A ROADSIDE TRANSPORT CAFÉ FOR A3/A5 USES PLUS 24 HOUR WC AND DRIVER WASH AND SHOWER FACILITIES- LAND ADJACENT TO THANET WAY, HIGHSTREET ROAD, HERNHILL, KENT ME13 9EN

The formal response from Kent County Council has been received further to Paragraph 6.11 on Page 55 of the agenda and is summarized as follows:

The application includes retention and incorporation of the surplus material, within an all embracing development package. This falls to Swale Borough Council to determine. However, there are aspects which KCC Planning Enforcement, as endorsed by the County Council's Regulation Committee, would wish to be considered in the balance at the Borough Council's Planning Committee on 21st July 2016.

There is a need for more explicit 'before and after' contours; detailed cross and long sections; land drainage profiles and the modelling of surface water run-off, particularly from the enhanced site boundary profiles, with water being directed onto the adjoining and encircling public highway (owned by the County Council).

The Environment Agency's (EA) Waste Materials Removal Notice, under section 59 of the Environmental Protection Act 1990 (as amended). This requires the imported material on site (within given parameters) to be taken off the land. The works were carried out in an uncontrolled way, with no apparent or prior ground work studies; pre-stripping / storage of available soils; control over the types of materials brought in; a placement regime (including compaction rates) and overall Waste & Resources Action Programme ('WRAP') compliance. All of these matters, including land drainage concerns have contributed to the EA action.

The EA action has been supported in principle by the County Council's Regulation Committee and is reinforced by Planning Enforcement Policy DM22 of the Kent Minerals & Waste Plan 2016 (as adopted by the County Council on 14th July 2016). Members in particular are concerned that alleged contraventions should not unfairly advantage any land interests or prospective developer(s). It is recognised however that the overall planning determination is a matter for Swale Borough Council.

In determining the application the County Council would request the Borough Council to fully consider the presence and purpose of the imported material on the site and satisfies itself that the material is reasonably necessary for the development to take place and that its retention represents sustainable development.

The County Council also recommends that you consider the potential impact of the EA pursuing its Material Removal Notice and the implications for the implementation of any grant of planning permission.

Should the Borough Council on balance decide to grant planning permission, the County Council (Planning Enforcement) would be available to assist in the drafting of technical conditions and would appreciate being re-consulted on any further details and any pre-commencement conditions.

Could you also please advise us of the outcome of the Committee Meeting and any progress in the case, particularly given our commitment to work more closely together along with the EA. This was agreed at our recent meeting in your offices, which was chaired by the leader of your Council in this and in his further capacity as the Chairman of the County Council's Regulation Committee.

The Environment Agency have advised further to Paragraph 6.3 on Page 52 of the agenda that:

'that it is an offence to import waste material without a licence and as a consequence a Removal Notice has been served on the land owners to remove the waste imported to site. We are advised that the Notice has not been complied with, which is also an offence and the matter is with the Environment Agency Legal Team awaiting assessment'.

The Environment Agency further state that:

Whilst the Local Authority may grant retrospective permissions, the Environment Agency cannot grant retrospective permits for recovery operations.

Local Representations further to Paragraph 5.0 on Pages 49 and 50 of the agenda

A further letter of objection has been received as follows:

Unsuitable site with access problems. Will cause 24 hour noise pollution and, judging by other truck parking areas, litter.

Mid Kent Environmental Health Service has advised further to Paragraph 6.2 on Page 52 of the agenda that:

I have considered the WAC testing assessment and test analyses submitted in support of this application. As the waste material has been imported to a commercial area, I would typically expect to see the imported material risk assessed for its suitability for use in such an area. Unfortunately, the documentation submitted, in terms of protection of human health, is unacceptable.

Mid Kent Environmental Health Service have further advised that this matter can be dealt with by condition. A suitable condition 24 is recommended.

Economy and Community Services Manager

No comment, from an economic development perspective.

Canterbury City Council have been consulted on the application and their comments are awaited.

Comment

The matters raised by Kent County Council with regard to levels and drainage can be secured by condition as recommended in the report.

AMENDED RECOMMENDATION

Give the Head of Planning DELEGATED POWERS TO APPROVE subject to final views of the Environmental Protection Team and the views of Canterbury City Council and amendment to the conditions.

It will be noted that this is a part retrospective application and in the circumstances Member authority is sought to amend the conditions as follows and a further condition 24. as required by the Environmental Protection Team.

Condition 1 is not appropriate and should be deleted. In addition, given the part retrospective nature of the development, it is appropriate to amend the pre-commencement conditions 2, 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 18, 20, 21 and 22 as follows:

2. No further development shall take place until written details and samples of the materials to be used in the construction of the external surfaces of any buildings including window details have been submitted to and approved in writing by the Local Planning Authority and the development shall be constructed in accordance with the approved materials.

Reason: To ensure a satisfactory appearance to the development.

3 No further development shall take place until written details and samples of the materials to be used in the construction of the hard surface of the landscaping areas have been submitted to and approved in writing by the Local Planning Authority and the development shall be constructed in accordance with the approved materials.

Reason: To ensure a satisfactory appearance to the development.

4. No further development shall take place until details to secure 120m x 2.4m x 120m sight lines between heights of 1.05m and 2m have been submitted to and approved in writing by the Local Planning Authority and the development shall be constructed in accordance with the approved details and maintained at all times thereafter.

Reason: In the interests of highway safety.

6. No further development shall take place until details of the existing ground levels and proposed finished ground levels including the existing bunds and of the proposed bunds and Gabion basket stone wall have been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details.

Reason: To ensure a satisfactory appearance to the development.

8. No further development shall take place until details of the gatehouse have been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details.

Reason: No such details have been submitted and to ensure a satisfactory appearance to the development.

9. No further development shall take place until the area shown on drawing number PLM 0515-01 C sheet 1 as vehicle parking and turning space has been paved and drained and the details have been submitted to and approved by the Local Planning Authority before the use is commenced or the premises occupied and shall be retained for the use of the occupiers of, and visitors to, the premises, and no permanent development, whether or not permitted by Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order), shall be carried out on that area of land or in such a position as to preclude its use.

Reason: Development without provision of adequate accommodation for the loading, off-loading and turning of vehicles is likely to lead to such activities inconvenient to other road users and detrimental to highway safety and amenity.

10. No further development shall take place until a detailed sustainable surface water drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The detailed drainage scheme shall be based on the recommendations within the report prepared by (RMB Consultants – October 2015), and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted, critical, 100yr storm) can be accommodated on site before being discharged at an agreed greenfield rate.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and to ensure ongoing efficacy of the drainage provisions.

11. No further development shall take place until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:

- i) a timetable for its implementation, and
- ii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and to ensure ongoing efficacy of the drainage provisions.

12. No further development shall take place until details of all fencing, walling and other boundary treatments have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details before the first occupation of the buildings or land and maintained thereafter at all times.

Reason: To ensure a satisfactory appearance to the development.

13. No further development shall take place until full details of soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity, where possible), plant sizes and numbers where appropriate and an implementation programme.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity and to ensure that such matters are agreed prior to the commencement of development.

18. No further development shall take place until details of parking for site personnel/ operatives/visitors have been submitted to and approved by the Local Planning Authority and thereafter shall be provided and retained throughout the construction of the development. The approved parking shall be provided prior to the commencement of the development.

Reasons: To ensure provision of adequate off-street parking for vehicles in the interests of highway safety and to protect the amenities of local residents.

20. No further development shall take place until adequate precautions and details have been submitted to, and approved in writing by the Local Planning Authority to guard against the deposit of mud and similar substances on the public highway and shall be retained throughout the construction of the development.

Reasons: In the interests of amenity and road safety.

21. No further development shall take place until details of foul drainage have been submitted to and proved by the Local Planning Authority and the development shall be carried out in accordance with the approved details.

Reason: In the interests of public health.

22. The development hereby permitted shall incorporate measures to minimise the risk of crime. No further development shall take place until details of such measures, according to the principles and physical security requirements of Crime Prevention through Environmental Design (CPTED) have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented before the development is occupied and thereafter retained.

Reason: In the interest of Security, Crime Prevention and Community Safety and in accordance with the guidance within The Kent Design Initiative (KDI) and protocol dated April 2013.

24. No further development shall take place until a human health risk assessment has been submitted to and approved by the Local Planning Authority which demonstrates the suitability for use of the imported waste material for the end use. The Soil Guideline Values for commercial use shall be referred to. In the event of the human health risk assessment failing, a remediation scheme shall be submitted to and approved in writing by the Local Planning Authority and the remediation shall be completed to the satisfaction of the Local Planning Authority before the development commences. This condition shall not be discharged until the approved remediation scheme has been implemented and a closure report has been submitted to the Local Planning Authority.

Reason: In the interests of public health