

Committee: **Regulatory
Planning Committee**

Date: **15 May 2019**

Report by: **Director of Communities, Economy and Transport**

Proposal: **Renewal of planning permission WD/772/CM for
depositing of lake silt on land previously used as
lagoons.**

Site Address: **Bayham Lake Estate, Lamberhurst, Tunbridge Wells,
Kent, TN3 8BG**

Applicant: **Bayham Lake Management Ltd**

Application No. **WD/816/CM**

Key Issues: **(i) Renewal of Planning Permission
(ii) Changes in the Policy position
(iii) Matters raised in representations**

Contact Officer: **Miss Kiran Sajjan Tel. 01273 481595**

Local Member: **Councillor Bob Standley**

SUMMARY OF RECOMMENDATIONS

**1. To grant planning permission subject to conditions as indicated
in paragraph 4.1 of this report**

CONSIDERATION BY DIRECTOR OF COMMUNITIES, ECONOMY AND TRANSPORT

1. Introduction

1.1 The application WD/772/CM for depositing of lake silt to lagoons to the west of Bayham Lake was originally granted planning permission by the Planning Committee at its meeting in May 2016. The Committee resolved that the Director of Communities, Economy and Transport be authorised to grant planning permission subject to conditions. A copy of the previous Report and Decision Notice are attached as Appendix 1 and 2.

1.2 Since permission was granted, three years have ensued and the development has not been implemented due to the construction of a spillway at the eastern end of the lake. The construction of the spillway, approved by Tunbridge Wells Borough Council, is now complete and would aid the de-silting of the lake by providing the ability to lower the water level to allow for

easier access for the machinery. The applicant is therefore seeking to renew the extant planning permission, which is due to expire on 20 May 2019.

2. Consideration

Renewal of Planning Permission

2.1 This application primarily relates to the renewal of an extant planning permission relating to the depositing of 3,900 cubic metres of excess lake silt, resulting from the dredging of the western end of the Bayham Lake, onto an area of adjacent land. The removal of the silt deposited over time by the River Teise is part of the periodic maintenance and restoration of the Bayham Lake. The operations relating to the dredging of the western part of the Lake do not require planning permission.

2.2 Members resolved on 18 May 2016 that, Planning Permission be granted subject to the imposition of conditions relating to (i) a Programme of Works; (ii) Submission of an Arboricultural Report; (iii) Scheme of Landscape Management; (iv) Scheme of investigation and programme of implementation of archaeological work; (v) Completion of archaeological site investigation and post investigation assessment. Several of the conditions included within Planning Permission WD/772/CM are required to be discharged prior to the commencement of the development. Due to the limited amount of time left until the permission expires, the applicant considers that an application for renewal is necessary.

2.3 The previous consideration and assessment of the proposal as outlined in the May 2016 report is considered to remain relevant. There are no material changes to the proposal that would alter the assessment carried out in May 2016.

Changes in the Policy position

2.4 Since the consideration of the original application in May 2016, there have been two major changes in the relevant policy context. These relate to the National Planning Policy Framework (NPPF), which was revised in July 2018 and February 2019, and the Wealden Local Plan Submission Document January 2019. A further policy change has been the adoption of the East Sussex Waste and Minerals Sites Plan in February 2017, although the policies within this plan are considered to have little relevance to this application and proposal.

2.5 The NPPF was referred to in the May 2016 report (paragraph 5.4). The specific parts referred to in the May 2016 report have been maintained and the aims remain the same in the revised NPPF (February 2019). However, it should be noted that section numbers have now changed: Part 11 (Conserving and enhancing the natural environment) has been replaced by Part 15 (Conserving and enhancing the natural environment) and Part 12 (Conserving and enhancing the historic environment) has been replaced by Part 16 (Conserving and enhancing the historic environment). These revisions

are not considered to change the national policy position on the matters in question, or the status and weight of the Development Plan policies referred to in the May 2016 report (i.e. they are still considered to be NPPF compliant) and used in the assessment of the proposal.

2.6 The submission version of the Wealden Local Plan January 2019 has been published and as part of the examination of the Plan, stage 1 of hearings is due to take place in May 2019. Until this plan is adopted, policies from The Wealden District (Incorporating part of the South Downs National Park) Core Strategy Local Plan 2013 remain relevant and many policies from the earlier Wealden Local Plan 1998 are still “saved” where they remain of relevance and consistent with the NPPF, and until they are superseded. The relevant policies within the Submission Wealden Local Plan January 2019 are Policy EA5 (High Weald Area of Outstanding Natural Beauty); Policy BED1 (Design); Policy HE1 (Historic Environment); Policy HE3 (Sites of Archaeological Interest); Policy NE4 (Flood Risk); NE5 (Development Affecting Water Quality) and Policy WE1 (Waste). In accordance with paragraph 48 of the NPPF, these policies can be afforded some limited weight for decision making purposes. Notwithstanding this, the purpose of Policies within the Submission Wealden Local Plan reflect the intentions of the policies referred to in paragraphs 5.2 and 5.3 of the May 2016 report and there is no significant change to the policy considerations related to this renewal application.

2.7 Despite these changes to the relevant policy context, it is considered that there are no material differences in the thrust of the policies that were previously used to determine this proposal.

Matters raised in representations

2.8 In response to the application for renewal of planning permission WD/772/CM, two representations objecting to the proposal have been received. The first representation, a repeat response from the occupier of Forest Lodge, wishes to object on the same grounds raised in regards to the original application. These objections were addressed within the May 2016 report and there have been no material changes to the proposal, the application site, or in policy terms. The other representation received from Frant Parish Council also objects to this planning application. The Parish Council previously supported the proposal. Wealden District Council does not raise any objections and no other objections have been received to the proposal.

2.9 The occupier of Forest Lodge, located approximately 1 kilometre to the south west of the deposition areas is objecting on the following grounds: (i) The applicant has right of access to the track but this does not benefit the land which forms the lagoons; (ii) The burning of any waste timber from the felling of trees within the lagoon area could cause smoke pollution and create a fire risk to the adjoining woodland areas; (iii) As the lagoons have not been used for 30 years the land has reverted back to mature woodland and it is therefore considered that this proposal would change the use from woodland to a

landfill site for hazardous waste which would be considered inappropriate within an Area of Outstanding Natural Beauty; (iv) As no method statement has been submitted with the application the proposed 3900 cubic metres to be deposited can only be a guesstimate; (vi) As a works programme has not been submitted it is assumed that desilting will be carried out during the peak summer months, which coincides with the breeding seasons; and (vii) The submitted ecology report is limited as there is no acknowledgement of dormice or the impact on ground nesting birds with heavy industrial machinery making frequent trips in and around the Lake and lagoon area.

2.10 Frant Parish Council objects to the proposal on the following grounds: (i) The deposition location is considered inappropriate as the site is located within the Area of Outstanding Natural Beauty and adjacent to Bayham Abbey and would not fit into the character of the area; (ii) The proposed operations are outdated and it is recommended that the silt should be taken off site instead; (iii) The silt deposits would cause threat to local wildlife; (iv) It is considered that the silt would pose a hazard and would impact the amenity of users of the public right of way to the south of the site; and (vi) Lack of acknowledgement of the telephone line that runs underneath the site.

2.11 Although the proposal would require clearance of self-sown trees and vegetation, which are considered to be of poor quality, and there would be a change in the contours of the area, it is not considered that the final landform would be out of character with the area as the average depth of the deposited silt would not exceed the height of the existing banks around the lagoons. The site is not open to public access, but some disruption may be experienced by users of the track to the south of the site, however this would be temporary during the construction period.

2.12 An updated Ecological and Enhancement Plan has been submitted as part of the application for renewal, the report concludes that there has been no significant change in habitats and conditions since the earlier surveys undertaken between March 2013 and October 2015. Therefore, it is considered that the recommendations for mitigation, compensation and enhancement made in the original ecological statement remain valid. On completion of the development, the applicant has indicated that the woodland would be subject to a management programme. Overall, a balance has to be struck and in this case it is considered that the site is suitable for the deposition of silt.

2.13 It is considered that the matters raised within the Parish Council's objection have been sufficiently addressed within the report (Appendix 1) and by the inclusion of conditions. As there has been no material change in the policy position, the application site, or the proposal no further assessment is required.

3. Conclusion and reasons for approval

3.1 In accordance with Section 38 of the Planning and Compulsory Purchase Act 2004 the decision on this application should be taken in

accordance with the Development Plan unless material considerations indicate otherwise.

3.2 Planning permission is sought for the renewal of an extant planning consent for the depositing of excess lake silt, onto an area of land previously used as lagoons to the west of the Bayham Lake. There are no material changes to the proposal and it has been considered that there are no material differences in the thrust of the policies that were previously used to determine the proposal. The proposal for renewal therefore accords with the following Policies: WMP8b (Deposit of Inert Waste on Land for Beneficial Uses); WMP17 (Restoration); WMP23b (Operation of Sites); WMP25 (General Amenity); WMP26 (Traffic Impacts); WMP27(a,b) (Environment and Environmental Enhancement); WMP28a (Flood Risk). of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan 2013 and Saved Policies EN6 (High Weald AONB); EN12 (Trees, Woodland & Landscaping); EN13 (Ancient Woodland); EN16 (Nature Conservation); EN22 (Buildings of special and Architectural or Historic Interest); EN23 (Historic Parks and Gardens); EN24, EN25, EN26 (Archaeology); EN27 (Design & Layout of Development) of the Wealden Local Plan 1998. The proposal also complies with Policy EA5 (High Weald Area of Outstanding Natural Beauty); Policy BED1 (Design); Policy HE1 (Historic Environment); Policy HE3 (Sites of Archaeological Interest); Policy NE4 (Flood Risk); NE5 (Development Affecting Water Quality) and Policy WE1 (Waste) of the Submission Wealden Local Plan 2019 and also with the provisions in the National Planning Policy Framework 2019.

3.3 In determining this planning application, the County Council has worked with the agent in a positive and proactive manner. The Council has also sought views from consultees and neighbours and has considered these in preparing the recommendation. This approach has been taken positively and proactively in accordance with the requirement in the NPPF, and as set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

3.4 There are no other material considerations and the decision should be taken in accordance with the Development Plan.

4. Recommendation

4.1 To recommend the Planning Committee to grant planning permission subject to the following conditions:-

1. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out in accordance with the drawings and documents listed in the Schedule of Approved Plans.

Reason: For the avoidance of doubt and in the interests of proper planning.

3. Prior to the commencement of the development hereby permitted a Programme of Works shall be submitted to and approved by the Director of Communities, Economy and Transport and shall include full details of the proposed operations including:
 - Method for silt removal and deposit;
 - Any ground and surface preparation necessary to accommodate the operations;
 - Timescale of works;
 - Access arrangements and provisions for the management of construction traffic;
 - Type and location of proposed equipment; and
 - Location of underground services.

The development shall be carried out in accordance with the approved Programme of Works, unless otherwise agreed in writing by the Director of Communities, Economy and Transport.

Reason: To safeguard the amenity of the locality in accordance with Policies WMP23b and WMP25 of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan 2013 and Saved Policy EN27 of the Wealden Local Plan 1998.

4. No works to the trees and vegetation shall take place until an arboricultural report has been submitted to, and approved in writing by, the Director of Communities, Economy and Transport to confirm the precise nature and scope of works to the trees and vegetation, together with arrangements for the protection of trees and the management of any waste arising from these works. This shall ensure that the mature trees and those identified as supporting bat roosts or having bat roost potential should be retained and protected in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction. The approved works shall be implemented in full and the tree protection arrangements remain in place for the duration of the works, unless otherwise agreed in writing by the Director of Communities, Economy and Transport.

Reason: To ensure the appropriate management of the site in the interests of safeguarding wildlife and visual amenity and to comply with Policies WMP25 and WMP27a of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan 2013 and Saved Policies EN6, EN23, EN12 and EN13 of the Wealden Local Plan 1998.

5. The deposit of the lake silt hereby permitted shall not commence until a scheme of management for the trees to be retained as identified in the

arboricultural report subject of Condition 4, has been submitted to and approved in writing by the Director of Communities, Economy and Transport. The scheme shall include how the trees and vegetation will be managed on completion of the deposition works and a timetable for implementation. The approved scheme shall be implemented in full unless otherwise agreed in writing by the Director of Communities, Economy and Transport.

Reason: To secure the appropriate landscaping at the site and to integrate the development effectively into the surrounding environment, to comply with Policy WMP27a of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan 2013 and Saved Policies EN6, EN23, EN12 and EN13 of the Wealden Local Plan 1998.

6. No development shall take place within the application site until a written scheme of investigation and programme of implementation of archaeological work has been submitted to and approved in writing by the Director of Communities, Economy and Transport. The development shall be carried out in accordance with the approved scheme which shall be implemented in full, unless otherwise agreed in writing by the Director of Communities, Economy and Transport.

Reason: To ensure that the archaeological and historical interest of the site is safeguarded and recorded in accordance with Saved Policies EN24, EN25 and EN26 of the Wealden Local Plan 1998.

7. Within 3 months of completion of the archaeological investigation as identified in the Written Scheme of Investigation under Condition 6, a written record of all archaeological works undertaken shall be submitted to and approved in writing by the Director of Communities, Economy & Transport.

Reason: To ensure that the archaeological and historical interest of the site is safeguarded and recorded in accordance with Saved Policies EN24, EN25 and EN26 of the Wealden Local Plan 1998.

8. No removal of hedgerows, trees or habitats shall take place between 01 March and 31 August inclusive, unless a competent ecologist has undertaken a careful, detailed survey of vegetation for active birds' nests. The survey shall be carried out immediately before the vegetation is cleared and written evidence shall be provided to confirm that no birds shall be harmed or that there are appropriate measures in place to protect nesting bird interest on the site. Any such written evidence shall be submitted to and approved in writing by the Director of Communities, Economy and Transport prior to any removal of vegetation.

Reason: To ensure that breeding birds are protected from harm during construction period in accordance with Section 1 of the Wildlife and Countryside Act 1981 as amended.

9. All ecological works and measures shall be carried out in full in accordance with the details contained in the approved Ecological Update and Enhancement Plan (dated 9 April 2019).

Reason: In the interests of protecting the biodiversity of the development site in accordance with the provisions in the NPPF.

INFORMATIVES

1. All reasonable steps shall be taken to ensure that any vehicles associated with the development leaving the site are in such condition as to not emit dust or deposit mud, or other debris on the highway.

Reason: In the interests of highway safety and the amenity of the locality, in accordance with Policies WMP25 and WMP26 of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan 2013 and Saved Policy EN27 of the Wealden Local Plan 1998.

2. The Applicant's attention is drawn to the provisions of The Wildlife and Countryside Act 1981 (as amended) particularly with regard to the protection of bats and nesting birds, which may be affected during the proposed operations.

Schedule of Approved Plans

Ecological Statement 09 December 2015, Proposed De-silting Activities Plan - 2656 55 revD 02/16, Site Plan - 14/00/249 May 2015 Dwg No. 4, Heritage Statement Feb 15, Supporting Statement, Ecological Update & Enhancement Plan 09 April 2019

RUPERT CLUBB
Director of Communities, Economy and Transport
3 May 2019

BACKGROUND DOCUMENTS

Application file WD/816/CM
Planning Permission WD/772/CM
The Development Plan