



21/03/2022

For the attention of: **Terry Burns**

Thank you for consulting us on the ESS/45/18/COL Additional Information application for Continuation of use of land for mineral extraction and ancillary use without compliance with Conditions 1 (Approved Details) and 3 (Duration) of planning permission ESX/27/92/COL originally granted for "Winning and working of sand and gravel, erection of a concrete batching plant and associated facilities, construction of a new site entrance and restoration to agriculture and amenity" to enable a revised restoration scheme and to accommodate an extension of time to achieve site restoration through until 31st December 2029. Land at Birch Pit, Maldon Road, Birch at Birch Pit, Maldon Road, Birch, CO5 9XE

The following response summarises the specialist views of Place Services' Landscape, Urban Design, Arboriculture, Ecology, Archaeology and Historic Buildings Teams.

**1.0 Landscape (Ryan Mills)
Support (Subject to Condition(s))**

- 1.1 There were previously concerns regarding the loss of mature trees and shrubs on the northern edge of the proposed mineral extraction area. Since then, the proposed excavation areas have now been reconfigured to allow for this tree belt to be retained long-term, which is supported. This may need to be re-surveyed, plotted on the plans, retained and managed.
- 1.2 The schedule of plant material indicated on the revised Landscape Restoration Plan (Drwg ref: BP 10/5) is welcomed, however it will be necessary for further discussions to be had to discuss landscape details (specification and schedule) once approved. For example, it would be beneficial to view the percentages of species proposed to be used for woodland, shrub and hedge mixes. Also, the use of the Wych elm (*Ulmus glabra*) would not be supported given its high susceptibility to Dutch Elm Disease (DED). If locally available, we would however support the use of *Ulmus* 'New Horizon', which is resistant to DED.
- 1.3 Condition 1: Existing hedgerows and trees within, and on the perimeter of, the site and identified for retention as depicted on Drwg No BP 10/5 entitled "Full Hedge" dated March 2020 shall be retained and shall not be felled, lopped, topped or removed. Any vegetation removed without consent, dying, being severely damaged or becoming seriously diseased (at any time during the development or aftercare period) shall be replaced with trees or bushes of such size and species as may be specified by the Mineral Planning Authority, in the planting season immediately following any such occurrences.
- 1.4 Reason for Condition 1: To confirm those details against which the acceptability of the development was determined, and to restricting the development to the design and scale approved having regard to Policy S10 of the Essex Minerals Local Plan Adopted July 2014 and the National Planning Policy Framework in respect of ensuring that permitted development does not give rise to unacceptable environmental impacts on the environment.
- 1.5 Condition 2: Within three months of the date of this permission a scheme of landscaping, based on Drawing Ref No: BP 10/5 entitled "Full Hedge" dated March 2020 shall be submitted to the Mineral Planning Authority. The scheme shall be implemented in accordance with the details as approved, in writing, by the Mineral Planning Authority. The submitted scheme shall make provision for:

- a. Detail of the locations of the planting programme as set out in the planting schedule outlined on the above plan.
 - b. A landscape management programme for the planting programme detailed on the above plan together with existing retained landscape features including all hedgerows, tree belts and woodland blocks.
 - c. Husbandry management of the existing perimeter hedgerows/trees and woodland.
 - d. Written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants noting species, plant sizes and proposed numbers/ densities for all areas
 - e. Grass seed mixes and rates.
 - f. A programme of implementation to include the provision for planting of the northern hedgerow during the first available season and for remaining planting to be undertaken following restoration within each working phase parcel.
 - g. A programme maintenance.
- 1.6 Reason for Condition 2: In accordance with Section 197 of the Town and Country Planning Act 1990; to ensure a comprehensive scheme of landscaping and to provide for the integration of the site back into the landscape having regard to Policy S12 of the of the Essex Minerals Local Plan Adopted July 2014 and the National Planning Policy Framework and Planning Practice Guidance on Restoration and Aftercare of mineral sites and for landscaping strategy's to address mineral working related impacts.
- 2.0 Urban Design**
No Comment
- 3.0 Arboriculture (Anne Hooper)**
- 3.1 We welcome the complete retention of the important landscape feature H1 and the six mature oaks (T1-T6) within it, in order to maintain site connectivity and avoid major/moderate adverse landscape impact.
- 3.2 The drawings provided thus far are not of a sufficient scale and lack detail (e.g., finished gradients, cross sections and stand-off details) to show how the promontory is to be achieved; concerns have previously been raised regarding the implementation of suitable buffer zones and operational practices.
- 3.3 If permission is granted, we would expect to see within a 2-month period an Arboricultural Method Statement (AMS) detailing operational practices and tree protection details. A letter from SLR dated 15.12.2020 discussed conditioning an AMS, with assumed stand-offs at 2m outside the crown spread of the retained trees or the adoption of common parameters of 12 x diameter at breast height (DBH). This needs clarification. Whilst this would be appropriate for temporary tree protection during construction, a larger stand-off would be more beneficial for the trees' long-term health.
- 3.4 Ongoing maintenance of the retained trees/hedging will be vital to assure continued health to address concerns about changes in soil structure and availability of soil moisture/water. A detailed restoration plan covering long-term management, beyond the statutory 5-year aftercare period should therefore cover watering, mulching, for newly planted and established trees and it is suggested, the use of vertical mulching and mycorrhizae inoculation for the retained mature trees as a one-off treatment post-excavation to address those concerns about availability of water, followed by regular standard mulching thereafter. Any tree or hedge plant losses should also be replaced. It is recommended that maintenance should be continued for at least a 15-year period after the statutory aftercare, as trees can take a long time to manifest damage and opportunities for positive intervention after the statutory aftercare period can be missed.

4.0 Ecology (Emma Simmonds)

No objection subject to securing biodiversity mitigation and enhancement

- 4.1 We welcome the proposed reconfiguration of the excavation areas to allow for the retention of the stretch of mature hedgerow with trees (priority habitat) to be retained long-term.
- 4.2 This supports the mitigation hierarchy set out in the NPPF 2021 (Paragraph 180), which aims to prevent significant harm to biodiversity, with compensation being the last resort. This is supported by Principle 1 of the Biodiversity Net Gain (Good Practice Principles For Development), which states, "Do everything possible to first avoid and then minimise impacts on biodiversity. Only as a last resort, and in agreement with external decision-makers where possible, compensate for losses that cannot be avoided."
- 4.3 It is acknowledged that the proposed habitats of the final restoration/landscaping have changed during the discussions. On balance, for the retention of the trees/ hedgerow the loss of the other habitats (dense and scattered scrub and semi-improved grasslands) is considered acceptable in this particular case.
- 4.4 As previously discussed, there is some inconsistency with the red line boundary. On some plans it is shown around the whole Site. However, the red line shown on plans in the Ecological Impact assessment Report (SLR Consulting Limited, November 2018) shows that it only considered the north-east area of the Site. Therefore, an Ecological Impact assessment (EclA) is required for any changes beyond that area. Furthermore, we draw your attention to the fact that the Ecological Impact Assessment is now over three years old. CIEEM guidance (Advice Note on the Lifespan of Ecological Reports and Surveys (April 2019) states that, where the data is more than three years old, "*The report is unlikely to still be valid and most, if not all, of the surveys are likely to need to be updated (subject to an assessment by a professional ecologist, as described above).*" Therefore, the EclA will require updating should any future plans change.
- 4.5 In addition, although other options have been discussed informally, very little background information has been recently submitted. We therefore recommend that the Biodiversity Metric calculations and alternative scenarios are formally submitted to aid in the future understanding of the Site's history.
- 4.6 We recommend that submission for approval and implementation of the details below should be a condition of any planning consent.

4.7 **Recommended conditions**

Condition 1: **ACTION REQUIRED IN ACCORDANCE WITH ECOLOGICAL APPRAISAL RECOMMENDATIONS**

"All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Ecological Impact assessment Report (SLR Consulting Limited, November 2018) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details."

- 4.8 Reason for Condition 1: To conserve and enhance protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).
- 4.9 Condition 2: **PRIOR TO COMMENCEMENT: CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN FOR BIODIVERSITY**

“A construction environmental management plan (CEMP: Biodiversity) shall be submitted to and approved in writing by the local planning authority.

The CEMP (Biodiversity) shall include the following.

- a) Risk assessment of potentially damaging construction activities.*
- b) Identification of “biodiversity protection zones”.*
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).*
- d) The location and timing of sensitive works to avoid harm to biodiversity features.*
- e) The times during construction when specialist ecologists need to be present on site to oversee works.*
- f) Responsible persons and lines of communication.*
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.*
- h) Use of protective fences, exclusion barriers and warning signs.*
- i) Containment, control and removal of any Invasive non-native species present on site*

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority”

- 4.10 Reason for Condition 2: To conserve protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species) as updated by the Environment Act 2021.

4.11 Condition 3: **FURTHER SURVEYS FOR DEVELOPMENTS PHASED OVER A LONG PERIOD**

“Where the approved development is to proceed in a series of phases, further supplementary ecological surveys shall be undertaken to inform the preparation and implementation of corresponding phases of ecological measures required through Condition(s) XX. The supplementary surveys shall be of an appropriate type for the above habitats and/or species and survey methods shall follow national good practice guidelines.”

- 4.12 Reason for Condition 3: To allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species)

4.13 Condition 4: **TIME LIMIT ON DEVELOPMENT BEFORE FURTHER SURVEYS ARE REQUIRED**

“If the DEVELOPMENT hereby approved does not commence within 1 year from the date of the planning consent, the approved ecological mitigation measures secured through condition shall be reviewed and, where necessary, amended and updated.

The review shall be informed by further ecological surveys commissioned to:

- i. establish if there have been any changes in the presence and/or abundance of the habitats and species currently present and*
- ii. identify any likely new ecological impacts that might arise from any changes.*

Where the survey results indicate that changes have occurred that will result in ecological impacts not previously addressed in the approved scheme, the original approved ecological measures will be revised and new or amended measures, and a timetable for their implementation, will be submitted to and approved in writing by the local planning authority prior to the commencement of the DEVELOPMENT.

Works will then be carried out in accordance with the proposed new approved ecological measures and timetable.”

- 4.14 Reason for Condition 4: To allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species).

- 4.15 Condition 5: Within Three Months of Consent: **ECOLOGICAL DESIGN STRATEGY**
Within Three Months of Consent an Ecological Design Strategy (EDS) shall be submitted addressing the Site's mitigation, compensation, enhancement and restoration.

The EDS shall include the following.

- a) Purpose and conservation objectives for the proposed works.
- b) Review of site potential and constraints.
- c) Detailed design(s) and/or working method(s) to achieve stated objectives.
- d) Extent and location/area of proposed works on appropriate scale maps and plans.
- e) Type and source of materials to be used where appropriate, e.g. native species of local provenance.
- f) Timetable for implementation demonstrating that works are aligned with the proposed phasing of development.
- g) Persons responsible for implementing the works.
- h) Details of initial aftercare and long-term maintenance.
- i) Details for monitoring and remedial measures.
- j) Details for disposal of any wastes arising from works.

The EDS shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter."

- 4.16 Condition 6: WITHIN ONE YEAR OF CONSENT: **LANDSCAPE AND ECOLOGICAL MANAGEMENT PLAN**
"A Landscape and Ecological Management Plan (LEMP) shall be submitted to, and be approved in writing by, the Minerals planning authority prior within one year of consent of the development.

The content of the LEMP shall include the following:

- a) *Description and evaluation of features to be managed.*
- b) *Ecological trends and constraints on site that might influence management.*
- c) *Aims and objectives of management.*
- d) *Appropriate management options for achieving aims and objectives.*
- e) *Prescriptions for management actions.*
- f) *Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).*
- g) *Details of the body or organisation responsible for implementation of the plan.*
- h) *Ongoing monitoring and remedial measures.*

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details."

- 4.17 Reason for Condition 6: To allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species)

**5.0 Archaeology (Richard Havis)
Support (Subject to Condition(s))**

- 5.1 The proposed extension of time on this application will not significantly affect any archaeological deposits on the site. This is being excavated in a phased approach as each new area is opened up.

**6.0 Historic Buildings (Maria Kitts)
No Objection**

- 6.1 Palmer's Farmhouse (Grade II listed) is the only designated heritage asset (built heritage) potentially impacted by the scheme due to its close proximity. The ZTV shows that the proposed development is not visible from the farmhouse and the ES Chapter 8 confirms that for this reason it has not been further assessed (para. 8.20). Whilst there is little or no visual interference, concerns were raised at an earlier stage regarding potential environmental impacts on the setting of the listed building, however, as noted in the ES Chapter (table page 8-3), there will be no increase or change from the existing quarry works. Therefore, there is not considered to be an impact on the setting of the listed building.

If you have any queries regarding the above matters, please do not hesitate to contact me.

Kind Regards,

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Place Services provide and coordinate specialist planning advice on behalf of Essex County Council.

Please note: This letter is advisory and should only be considered as the opinion formed by specialist staff in relation to this particular matter.