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Item No: 7.3

Application: 173000

Applicant: Colchester Borough Council

Agent: Mr Stephen Collis

Proposal: Variation of condition 3 of planning permission 170230 to allow construction to commence in March 2018.

Location: Pontoon opposite West Mersea Yacht Club, Coast Road, West Mersea, Colchester, CO5 8PB

Ward: Mersea & Pyefleet

Officer: Mark Russell

Recommendation: Approval

1.0 Reason for Referral to the Planning Committee

- 1.1 This item is referred to the Planning Committee because it is a Colchester Borough Council application.

2.0 Synopsis

- 2.1 This application is to make a minor change to permission granted earlier this year for an extended pontoon, with works conditioned not to commence until April due to concerns from Natural England.
- 2.2 It is explained that the only change sought relates to this earlier commencement date and that this is acceptable to the statutory consultee Natural England.
- 2.3 The application is subsequently recommended for approval, with all previous conditions still in force.

3.0 Site Description and Context

- 3.1 The site is an existing pontoon, stretching into the Blackwater Estuary, from a public site in West Mersea. The landward part of the site is within the Conservation Area of West Mersea.

4.0 Description of the Proposal

- 4.1 This proposal follows application 170230 which was to “Extend floating pontoon by 1.6m wide and 43m metres long” granted approval on 18th April 2017.
- 4.2 The relevant part of Condition 3 of that permission (with the key wording underlined here) states: “No works shall take place, including any demolition, until a Construction Method Statement has been submitted to and approved, in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall provide details for:..... Timing of the activities. Construction shall be limited to the months outside of the over winter birds season (October 1st - March 31st). To minimise the risk of disturbance to SPA birds.”
- 4.3 The application at hand seeks to vary this condition, to allow for commencement on March 1st. The justification for this is explained in the sections below.

5.0 Land Use Allocation

- 5.1 The site is unallocated foreshore.

- 5.2 The stretch of water belongs to the Blackwater Estuary Special Protection Area, Ramsar (an international treaty for the conservation and sustainable use of wetlands) which is by extension an SSSI, Essex Estuaries Special Area of Conservation and the Estuaries Marine Conservation Zone.

6.0 Relevant Planning History

- 6.1 071418 - Replacing the current floating pontoon. Approved 4th July 2007.
- 6.2 170230 - Extend floating pontoon by 1.6 metres wide and 43 metres long. Approved 18th April 2017.

7.0 Principal Policies

- 7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) must be taken into account in planning decisions and is a material consideration, setting out national planning policy. Colchester's Development Plan is in accordance with these national policies and is made up of several documents as follows below.

- 7.2 The adopted Colchester Borough Core Strategy (adopted 2008, reviewed 2014) contains local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations
SD2 - Delivering Facilities and Infrastructure
UR2 - Built Design and Character

- 7.3 The adopted Colchester Borough Development Policies (adopted 2010, reviewed 2014) sets out policies that apply to new development. Specific to this application are policies:

DP1 Design and Amenity
DP10 Tourism, Leisure and Culture
DP23 Coastal Areas.

- 7.4 Regard should also be given to the following adopted Supplementary Planning Documents (SPD):

- Sustainable Construction

8.0 Consultations

- 8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.

NOTE – the consultation period ran beyond the date on which this report was written, terminating prior to the Committee meeting. Any comments received in that time will be reported and responded to in the amendment sheet.

- 8.2 Natural England: “I can confirm that Natural England is satisfied that the proposed works to install a new section of pontoon at West Mersea Yacht Club, Coast Road, West Mersea may commence in March 2018.
- 8.3 This advice is in line with our previous advice as set out by my colleague Kayleigh Cheese in our e-mail 5th October 2017, namely that the works to install the new section of pontoon should avoid the core winter months Dec – Feb inclusive, as this is the most sensitive time for wildfowl and waders as set out in our e-mail dated 5th October 2017.”

9.0 Parish Council Response

- 9.1 At the time of writing, West Mersea Town Council’s comments were awaited.

10.0 Representations from Notified Parties

- 10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties. At the time of writing, no comments had been received.

11.0 Parking Provision

- 11.1 n/a

12.0 Open Space Provisions

- 12.1 n/a

13.0 Air Quality

- 13.1 The site is outside of any Air Quality Management Area and will not generate significant impacts upon the zones.

14.0 Planning Obligations

- 14.1 This application is not classed as a “Major” application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (s.106) of the Town and Country Planning Act 1990.

15.0 Report

- 15.1 The only issue to consider relates to the proposed earlier commencement of works.
- 15.2 At the time of application 170230, Natural England had stipulated that no works should take place until after the end of March due to concerns over the well-being of over-wintering birds, hence the wording of the condition at the time.
- 15.3 Our Parks and Recreation Officer has since advised that it would be advantageous to begin works four weeks earlier in order for them to be funded in the financial year 2017/18 rather than 2018/19.
- 15.4 Whilst this financial consideration carries limited material weight, provided there are no fundamental Planning issues which count against the proposal, it would be unreasonable to deny permission.
- 15.5 The sole issue for consideration is the potential harm that an earlier start could cause to wildlife, and in particular to the over-wintering birds in this Special Protection Area (SPA).
- 15.6 In correspondence with our Parks and Recreation Officer, Natural England stated on 14th November 2017: *“the work must be completed outside of the core winter months Dec – Feb inclusive, as this is the most sensitive time for wildfowl and waders.”*
- 15.7 This slightly altered position is, in part, premised on the fact that no piling is proposed for the proposed works.
- 15.8 With the foregoing, this logically means that Natural England does not oppose a March 1st start to the proposed works.

16.0 Conclusion

- 16.1 To summarise, the single issue at hand is held to be satisfied as it is acceptable to the statutory consultee. Permission can, therefore, be granted for this variation of condition.

17.0 Recommendation to the Committee

- 17.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following conditions:

1 ZAW *Removal/Variation of Condition(s) Approval*

With the exception of condition 3 of Planning Permission 170230 which is hereby varied, the requirements of all other conditions imposed upon planning permission 170230 remain in force and shall continue to apply to this permission, including the details and provisions of any approved matters discharging any condition(s) of that permission.

Reason: To avoid any doubt that this application only applies for the variation of the stated condition(s) of the previous planning permission as referenced and does not seek the review of other conditions, in the interests of proper planning and so that the applicant is clear on the requirements they need to comply with.

2 Z00 *Non Standard Condition

Condition 3 of Planning permission 170230 is hereby varied as follows:

No works shall take place, including any demolition, until a Construction Method Statement has been submitted to and approved, in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall provide details for:

- the parking of vehicles of site operatives and visitors;
- hours of deliveries and hours of work;
- loading and unloading of plant and materials;
- storage of plant and materials used in constructing the development;
- the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- wheel washing facilities;
- measures to control the emission of dust and dirt during construction;
- A scheme for recycling/disposing of waste resulting from demolition and construction works.
- Timing of the activities. Construction shall be limited to the months outside of October 1st – February 28th to minimise the risk of disturbance to SPA birds.
- Details of any foreshore access requirements and methods.
- Details of any piling methods if required, including details of noise and vibration levels.
- How the proposal affects the movement of sediment, if applicable. The applicant should seek to minimise the disturbance to mudflats and the mobilisation of sediments and risk of flow tides, to reduce the impacts to the SAC during construction.

Reason: In order to ensure that the construction takes place in a suitable manner and to ensure that amenities of existing residents and the ecological environment are protected as far as reasonable.

18.0 Informatives

18.1 The following informatives are also recommended:

1. ZT0 – Advisory Note on Construction & Demolition

The developer is referred to the attached advisory note *Advisory Notes for the Control of Pollution during Construction & Demolition Works* for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works.

2. ZTA - Informative on Conditions Stating Prior to Commencement/Occupation

PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either **before you commence the development or before you occupy the development**. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission and be investigated by our enforcement team. Please pay particular attention to these requirements. To discharge the conditions and lawfully comply with your conditions you should make an application online via www.colchester.gov.uk/planning or by using the application form entitled 'Application for approval of details reserved by a condition following full permission or listed building consent' (currently form 12 on the planning application forms section of our website). A fee is also payable, with the relevant fees set out on our website.