
APPLICATION NO.	24/00341/VARS
APPLICATION TYPE	VARIATION OF CONDITIONS - SOUTH
REGISTERED	13.02.2024
APPLICANT	Gerard Hall Energy Limited
SITE	SHB Hire Ltd, Mill Lane, Nursling, SO16 0YE, NURSLING AND ROWNHAMS
PROPOSAL	Vary condition 7 of 23/01080/FULLS (Erection of an electricity substation) - to remove restriction on the location of construction compounds, plant machinery, storage and parking on land north and west of application site
AMENDMENTS	
CASE OFFICER	Mark Staincliffe

Background paper (Local Government Act 1972 Section 100D)

[Click here to view application](#)

1.0 INTRODUCTION

1.1 The application is presented to Southern Area Planning Committee at the request of a Local Ward Member as there is significant local interest.

2.0 SITE LOCATION AND DESCRIPTION

2.1 The application site is situated to the northern side of Mill Lane and within Nursling and Rownhams Parish.

2.2 The site is situated within the northern part of the existing SHB Hire site and is currently lawfully used for the storage of vehicles. Adjacent to the site is the recently approved and implemented battery storage facility, as well as being in close proximity to an area that was formally wooded and forming part of the Big Wellow Wood SINC. It is evident that trees were felled and the land striped prior to the submission of previous applications.

3.0 PROPOSAL

3.1 Vary condition 7 of 23/01080/FULLS (Erection of an electricity substation) - to remove restriction on the location of construction compounds, plant machinery, storage and parking on land north and west of application site. The Applicant is proposing to vary the condition so that it states:

No development shall commence on site (including any works of demolition or site clearance), until a Construction and environmental Management Plan has been submitted to, and approved in writing by the Local Planning Authority. The Plan shall include the following:

- i) the parking of vehicles of site operatives and visitors;
- ii) loading and unloading of plant and materials;
- iii) storage of plant and materials used in constructing the development;

- iv) hours of construction, including deliveries;
- iv) wheel washing facilities;
- v) measures to control the emission of dust and dirt during demolition and construction;
- vi) measures for the protection of the natural environment, in particular the details shall include measures to protect the adjacent SINc, and measures to prevent spillages which may affect soil composition.

The approved Statement shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement. Reason: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, detriment to the natural environment through the risks of pollution/harm to ecology and dangers to highway safety, during the construction phase having regard to Test Valley Borough Revised Local Plan (2016) Policy E8.

4.0 HISTORY

4.1 17/00584/FULLS- Erection of a flexible electricity generation unit with woodland restoration- *ALLOWED AT APPEAL*

4.2 19/02772/FULLS- Erection of a battery storage facility- *PERMISSION SUBJECT TO CONDITIONS*

4.3 23/01080/FULLS- Erection of an electricity substation- *PERMISSION SUBJECT TO CONDITIONS*

5.0 CONSULTATIONS

5.1 **Ecology**- I would be concerned with respect to the storage of materials, and the handling of any spillages within this land with respect to further altering the soil composition, and I would therefore like to see some comment from the applicant on how this aspect of the proposed compound will be managed through point iii and vii of the Construction Environment Management Plan. Subject to this information No Objection.

Officer Comment- The applicant has suggested minor changes to the wording of vii. These changes are considered to provided adequate safeguards and such details and safeguards will be considered as part of the discharge of condition.

6.0 REPRESENTATIONS Expired 08.03.2024

6.1 **Nursling and Rownhams Parish Council**- Objection (Summary):

- Location of compound is outside boundary of location plan. This application is requesting development outside of the red line boundary of the approved planning application.

- The applicant has not submitted any new location plans to support development beyond the original red outline. It is not clear where the land intended for use as a compound is located.
- The proposed compound is referred to as temporary. No detail as to how long this period might be and what changes the applicant is proposing and the impact on the environment.
- No plans to show how the land will be restored after it is used as a compound.
- No detail as to whether the applicant has the landowner's permission to use the land for a compound.

6.2 **Public Consultation-** The application generated 10 letters of objection. A summary of the points raised are set out below:

- The woodland in this area was illegally felled in 2017 and was supposed to have been reinstated, which it has not. The existing SHB Hire site should be used as temporary storage.
- The site is of ecological value, so the variation to Condition 7 should not be granted
- The whole application should be reviewed
- Full permission has not been granted for the erection of the substation
- The Council must pursue the requirement that the illegally cleared land is restored.
- The proposed 'adjacent land' falls outside of the red line to the approved application.
- The location of the proposed temporary contractors' site has not been defined
- The proposal would lead to more development in a rural setting, would change the landscape of the area with the added risk of pollution to wildlife.
- Storage compound would be in a flood plain and adjacent SSSI.
- Land might be contaminated
- The application seeks to allow development and no requirement to restore the land afterwards.

7.0 **POLICY**

7.1 Government Guidance

National Planning Policy Framework (NPPF)

National Planning Practice Guidance (NPPG)

National Policy Statement for Energy (EN-1)

7.2 Test Valley Borough Revised Local Plan (2016)(TVBRLP)

COM2 (Settlement Hierarchy)

SD1 (Presumption in Favour of Sustainable Development)

E1 (High Quality Development in the Borough)

E2 (Protect, Conserve and Enhance the Landscape Character of the Borough)

E5 (Biodiversity)

E6 (Green Infrastructure)

E8 (Pollution)

LHW4 (Amenity)
T1 (Managing Movement)
T2 (Parking Standard)

8.0 **PLANNING CONSIDERATIONS**

- 8.1 Section 73 of the 1990 Town and Country Planning Act has regard to the variation of conditions and facilitates the submission of applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.
- 8.2 On such an application the Local Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted, and if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.
- 8.3 In this instance, the main planning consideration is whether the proposed variation to condition 7 as set out in section 3 above is acceptable, when assessed against the policies of the TVBRLP and all other material planning considerations.
- 8.4 The planning condition (7) is proposed to remain the same in all aspects other than the changes proposed by the applicant to vii). The relevant parts of the condition will read as follows with the removal of the original text shown with a 'strikethrough':
- vii) measures for the protection of the natural environment, in particular the details shall include measures to protect the adjacent SINC, and measures to prevent spillages which may affect soil composition. ~~and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending those Orders with or without modification) no compounds, plant, machinery, storage or parking shall take place on land to the north or west of the application site.~~
- 8.5 It is acknowledged that the land to the north and the west of the site formed part of the SINC Compensation Area secured by a planning condition attached to application 19/02772/FULLS. This condition requires biodiversity restoration and enhancement along with a Management Plan. These two planning permissions are linked, and the substation granted permission under 23/01080/FULLS is highly unlikely to be constructed other than in tandem with the approved battery storage facility, which in turn secures the implementation of the SINC restoration.
- 8.6 The current application is accompanied by further guidance and advice from the applicant's Ecologist and the conclusions are noted. Taking into consideration this document, the planning history for the site and the reason for the planning condition, as originally drafted it is considered that minor changes to the condition 7 are needed and are reasonable.

8.7 The suggested changes proposed are considered to be appropriate, however, in the unlikely event that the substation granted permission under application 23/01080/FULLS is constructed and the battery storage facility is not constructed it is considered necessary to have a further safeguard and the following addition to Condition 7 is recommended:

viii) Land restoration plan demonstrating that, as a minimum, the land will be returned to its condition prior to the works being undertaken and time frame for the restoration works.

8.8 Subject to the changes to condition 7 it is considered appropriate the vary condition 7. The proposed changes meet the six tests as set out in the NPPF and will ensure that the development is undertaken in an acceptable manner, to minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, detriment to the natural environment through the risks of pollution/harm to ecology and dangers to highway safety, during the construction phase of the development.

8.9 **Previously applied conditions**

Other than the proposed changes to condition 7 all other planning conditions remain unaltered from the planning permission previously issued under application reference 23/01080/FULLS as these remain relevant and necessary to ensure the acceptable of the proposed development in planning terms and should be reapplied in the terms set out below.

8.10 **OTHER MATTERS**

8.11 Restoration of SINC

Planning application 19/02772/FULLS was submitted in November 2019 for the erection of a battery storage facility, and this was granted planning permission, subject to conditions, on 13 March 2020.

8.12 Condition 3 of planning permission 19/02772/FULLS required details relating to the restoration of the SINC to be submitted to and approved in writing by the Local planning authority. The details relating to this condition have been agreed and the condition discharged. The restoration and management of the land is a requirement of the permission and were restoration not to be undertaken in accordance with the agreed details this would be a matter for the Council's planning enforcement team.

8.13 Red Outline

There is no requirement for the compound to be within the red outline of the application site. Indeed, Schedule 2, Part 4 Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 allows for the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land. The purpose of the wording of the original condition was to have control over these rights to ensure that the compound is in an appropriate location that would not result in harm, that could otherwise have been provided utilising these rights.

- 8.14 Within the applicant's submission, which was not before the Council in the consideration of the original application, clear justification has been provided as to why the storage compound can be provided, subject to certain safeguards, on the land in question and why the condition as originally drafted is neither necessary nor reasonable. Subject the new condition 7 below the proposal is considered acceptable and the land being beyond the red outline on the site plans would not justify refusing the application.
- 8.15 Flood Plain & SSSI
The application site, the land relating to planning application 19/02772/FULLS and the proposed SINC restoration land is not within Flood Zone 1 or 2 and the land is not within a SSSI.
- 8.16 Proposed Compound
Concerns have been raised that no details relating to the proposed storage compound, its size or precise location have been provided. These are all matters that would be considered under the discharge of condition application controlled by condition 7 of this permission. It is not necessary for such details to be provided at this stage.
- 8.17 Restoration of the Land
As outlined above, the exact location of the compound is not yet known, but the indication is that the compound will be located on land that is the subject of an ecological restoration condition relating to planning permission 19/02772/FULLS.
- 8.18 If planning application 19/02772/FULLS is not constructed the need for the plant granted planning permission under application 23/01080/FULLS is highly unlikely to be undertaken. However, in the unlikely circumstance that the plant is constructed and application 19/02772/FULLS is not constructed it is recommended that an additional requirement is added to condition 7 requiring:

Land restoration plan demonstrating that as a minimum the land will be returned to its condition prior to the works being undertaken.

Following this the Forestry Commission could then enforce the restocking notice to ensure that the land regenerates, in accordance with the requirements of the notice.

- 8.19 Restocking Notice
Objections received have raised concern about the behaviour of the applicant with regards to unlawful felling of trees and the destruction of a SINC. As a matter of fact the application site did not form part of the SINC or woodland being referred to in the representations.
- 8.20 An area of land adjacent to the site did once contain woodland and prior to submission of the 2017 planning application, clearance of the site occurred. This included the removal of trees and woodland. It is understood that a notice was served on the site owner by the Forestry Commission, not the Council, to restock the woodland or allow regeneration of it. From an enforcement perspective the council have no powers to pursue compliance with that notice. Any concerns that residents have in that regard should be directed to the Forestry Commission.

8.21 Length of Time Compound Required

The compound is a temporary requirement for the duration of the development. The amended condition will require the submission of a land restoration plan demonstrating that, as a minimum, the land will be returned to its condition prior to the works being undertaken and a time frame for any restoration works to be undertaken.

8.22 Planning Merits

Representations indicate that this should be an opportunity to look again at the merits of the planning permission granted for the battery storage facility and substation. Unfortunately, the application relates to the variation of the planning condition. This is not an opportunity to reconsider the merits of the permissions previously granted by the Council and such an approach would be unreasonable and unjustified.

9.0 **CONCLUSION**

9.1 The proposed alterations and additions to the condition are considered acceptable and in accordance with the policies of the TVBRLP and all other material planning considerations, therefore the recommendation is to alter vii and the addition of viii and for permission subject to conditions and notes.

10.0 **RECOMMENDATION**

PERMISSION subject to:

1. **The development hereby permitted shall be begun within three years from the date of the original planning permission (23/01080/FULLS) granted planning permission on 23 August 2023. Reason: To comply with the provision of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.**
2. **The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers:
AUG1217NURSLING-306-A 1 of 3
AUG1217NURSLING-306-A 2 of 3
AUG1217NURSLING-306-A 3 of 3
AUG1217NURSLING-402-B
AUG1217NURSLING-403-A
Reason: For the avoidance of doubt and in the interests of proper planning.**
3. **Prior to first use of the transformer hereby approved the proposed acoustic fence shall be installed in accordance with the specification given in section 4.3 of the Ian Sharland Limited Acoustic Design Specification v.2 and the locations shown in Figure 2 of the Ian Sharland Limited Acoustic Design Specification v.2 and in the location shown on Substation - Plan View. Once installed the acoustic fencing shall be retained in perpetuity and maintained to ensure that it performs to the acoustic performance set out in the Ian Sharland Limited Acoustic Design Specification v.2.**

Reason: To ensure a safe living/working environment in accordance with Test Valley Borough Revised Local Plan 2016 policy LHW4 & E8.

- 4. No development shall take place (other than any approved demolition and site clearance works) until an assessment of the nature and extent of any contamination and a scheme for remediating the contamination has been submitted to and approved in writing by the Local Planning Authority. The assessment shall be undertaken by a competent person, and shall assess the presence of any contamination on the site, whether or not it originates on the site. The assessment shall comprise at least a desk study and qualitative risk assessment and, where appropriate, the assessment shall be extended following further site investigation work. In the event that contamination is found, or is considered likely, the scheme shall contain remediation proposals designed to bring the site to a condition suitable for the intended use. Such remediation proposals shall include clear remediation objectives and criteria, an appraisal of the remediation options, and the arrangements for the supervision of remediation works by a competent person. The site shall not be brought in to use until a verification report, for the purpose of certifying adherence to the approved remediation scheme, has been submitted to and approved in writing by the Local Planning Authority.**

Reason: To ensure a safe living/working environment in accordance with Test Valley Borough Revised Local Plan 2016 policy E8.

- 5. No external lighting shall be installed unless in accordance with details that have been submitted to and approved in writing by the local planning authority they shall thereafter be retained as such. The details shall include plans and details sufficient to show the location, type, specification, luminance and angle of illumination of all lights/luminaires and a light spread diagram.**

Reason: To safeguard the amenities of the area and protected species in accordance with Test Valley Borough Revised Local Plan (2016) Policies E8 & E2 & E5

- 6. No work relating to the construction of the development hereby approved, including deliveries, collections or site preparation prior to construction, shall take place before the hours of 07.30 nor after 18.00 on Mondays to Fridays; before the hours of 08.00 nor after 13.00 on Saturdays; and at all on Sundays and Bank/Public Holidays, unless otherwise agreed with the Local Planning Authority.**

Reason: In order that the development is undertaken in an acceptable manner, to minimise detrimental effects to the neighbouring amenities, the amenities of the area in general having regard to Test Valley Borough Revised Local Plan (2016) Policy E8

- 7. No development shall commence on site (including any works of demolition or site clearance), until a Construction and Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall include the following:**

- i) The parking of vehicles of site operatives and visitors.**
- ii) Loading and unloading of plant and materials.**
- iii) Storage of plant and materials used in constructing the development.**
- iv) Hours of construction, including deliveries.**
- v) Wheel washing facilities.**
- vi) Measures to control the emission of dust and dirt during demolition and construction.**
- vii) Measures for the protection of the natural environment, in particular the details shall include measures to protect the adjacent SINC, and measures to prevent spillages which may affect soil composition.**
- viii) Land restoration plan demonstrating that, as a minimum, the land will be returned to its condition prior to the works being undertaken and time frame.**

The approved Statement shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.

Reason: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, detriment to the natural environment through the risks of pollution/harm to ecology and dangers to highway safety, during the construction phase having regard to Test Valley Borough Revised Local Plan (2016) Policy E8.

Note to applicant:

- 1. In reaching this decision Test Valley Borough Council (TVBC) has had regard to the National Planning Policy Framework and takes a positive and proactive approach to development proposals focused on solutions. TVBC work with applicants and their agents in a positive and proactive manner offering a pre-application advice service and updating applicants/agents of issues that may arise in dealing with the application and where possible suggesting solutions.**
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