



Appeal Decision

Virtual Hearing Held on 27 April 2021

Site visit made on 28 April 2021

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2021

Appeal Ref: APP/X2410/C/20/3261785

Land at Rayn's Island, Rotherley, Leicestershire LE7 7NL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Saul Mahoney against an enforcement notice issued by Charnwood Borough Council.
- The enforcement notice was issued on 14 September 2020.
- The breach of planning control as alleged in the notice is without planning permission the change of use of the Land to residential use and the erection of buildings and structures associated with the residential use.
- The requirements of the notice are:
 - 1) Cease the residential use of the Land
 - 2) Remove the decking and log burning flue from the brick building
 - 3) Remove the polytunnel
 - 4) Remove all buildings (detailed in the photographs attached to the notice) including, but not limited to:
 - the solar shed and associated equipment including, but not limited to solar panels, LPG generator, storage batteries and inverting equipment,
 - water bore shed and associated equipment including but not limited to IBC storage tanks, and pumping filtration equipment,
 - tool shed including its contents,
 - log store and
 - composting storage area including, but not limited to the IBC storage tanks.
 - 5) Remove from the Land any other residential items such as, but not limited to washing lines, garden furniture etc.
 - 6) Remove floating pontoons.
- The period for compliance with the requirements is 23 October 2021 being 12 months from the date this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal on ground (a) has been made, an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.

Summary of Decision: The appeal is allowed in part on ground (d) and the enforcement notice is quashed after planning permission is granted in the terms set out below in the Formal Decision.

Preliminary matters

1. At the Hearing, the appeal parties agreed that the issued notice alleges a change of use and operational development. This is how it has been interpreted. In respect of how I intend to evaluate the grounds of appeal, the appellant's operational development case is dependent upon the outcome of their arguments about the alleged change in the use of the land. I will separately assess the change of use and operational development for clarity.

2. Paragraph 6 of the notice identifies 23 October 2021 as being 12 months from when the notice takes effect. As an appeal under s174 of the 1990 Act was lodged, the specified date for compliance is incorrect. There can be no doubt that the compliance period was intended to be 12 months and I can delete the specified date without causing injustice to any party. That is what I will do.

Ground (b) appeal

3. To succeed on this ground the appellant should show, on the balance of probability, that the residential use of the land has not in fact occurred.
4. At the time when the notice was issued, various buildings had been erected on the appeal site. However, the argument is that a brick building, which has existed for some time on the land, has always been used and occupied as a single dwellinghouse. The claim is that no breach of planning control has occurred as the land has always been in a residential use.
5. The appeal parties agree that the brick building had been erected pre-1947 and did not need planning permission. While the appellant has provided some evidence relating to the historic use of the brick building, in the form of a newspaper cutting and historic maps, this evidence does not sufficiently demonstrate that the brick building was erected as a dwellinghouse or that it has always been used as a dwellinghouse, because it is too imprecise and is ambiguous. There is nothing before me to confirm the appellant's claim that the brick building and the land has always been in a residential use.
6. The brick building has the appearance of a dwellinghouse, and the interior is divided into kitchen, shower room, bedroom and lounge. There is no planning definition of 'dwellinghouse', however *Gravesham*¹ confirmed that whether a building was or was not a dwellinghouse was a question of fact and identified that a '*distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day to day private domestic existence*'. The evidence before me confirms that, at the date the notice was issued, the brick building contained cooking, washing, sleeping and living facilities, which can be construed as the necessary facilities for day-to-day domestic existence.
7. At the Hearing, the Council conceded that the brick building was being used as a single dwellinghouse at the date of issue, and it was from this use that they had derived the 'residential use of the Land' and that is how the alleged breach of planning control was described in the issued notice. However, the evidence shows an existing brick building had in fact been converted into a dwelling at some point in time. The brick building was used as a dwellinghouse at the time when the notice was issued. I find that the notice incorrectly describes the breach as a change of use of the land to residential use, because the existing brick building has been converted into a dwelling and is occupied as someone's home. In addition, for precision, the description should allege a "material" change of use to accurately reflect the meaning of "development" in s55(1) of the 1990 Act.
8. For greater precision, the notice should describe the alleged breach of planning control in the following way:

¹ *Gravesham BC v Secretary of State for the Environment* (1982) 47 P & CR 142

'Without planning permission, the material change of use of a building to use as a single dwellinghouse and the erection of buildings and structures associated with the residential use'.

9. S176(1) allows me to correct any misdescription in the notice, providing injustice would not be caused. At the Hearing, the appellant and Council agreed that the material change of use (MCU) stems from the use of the brick building as a single dwellinghouse and no injustice would arise from my correction of the notice. Accordingly, having regard to all the material facts and evidence before me, I consider that the nature of the alleged breach of planning control is incorrectly specified in the issued notice. The error has not caused significant confusion because all the evidence points to a material change in use of the existing brick building, which is the subject of the 4-year immunity limit. That is how the parties interpreted the notice.
10. There is no dispute that the brick building and other buildings and structures existed during a period leading up to the issuing of the notice and the brick building was used as a single dwellinghouse at the date of issue. For these reasons, the appeal on ground (b) fails because the matters alleged in the corrected notice in fact occurred.

Ground (c) appeal – change of use

11. To succeed on this ground the appellant should show, on the balance of probability, that the corrected allegation does not require planning permission.
12. The historic use of the brick building as a single dwellinghouse has not been demonstrated on the balance of probability. The appellant therefore argues that the previous owners established its lawful use as a single dwellinghouse and his residential occupation is a continuation of that lawful use.
13. S55(1) states that the meaning of "development" includes "*the making of any material change in the use of any buildings or other land*". The evidence does not support the claim that the brick building was used for residential purposes before the previous owners' occupation. I will assess whether the change of use to a single dwellinghouse is immune from enforcement action later. For the purposes of this ground (c) appeal, express planning permission is required for the MCU of the brick building to a single dwellinghouse, as stated in s55(1). The previous owners' and the appellant's use of the brick building as a single dwellinghouse does not have the benefit of planning permission. The express planning permission required for the MCU of the brick building to a single dwellinghouse was not obtained.
14. For the reason given above, in respect of the change in the use allegation, the appeal on ground (c) fails.

Ground (d) appeal

15. The appeal is that at the date the notice was issued it was too late to take enforcement action against the breach of planning control due to the passage of time. For the purposes of assessing immunity in respect of a breach of planning control consisting of the MCU of any building to use as a single dwellinghouse, the relevant period is 4 years starting with the date of the breach.

16. In pursuing an appeal on this ground, the burden of proof is on the appellant. The appellant should show, on the balance of probability, that the brick building became a dwelling on or before 14 September 2016 and it was used as a single dwellinghouse for a continuous period of 4 years without significant interruption.
17. Having regard to *Thurrock*² and *Swale*³, there has also been no suggestion that there was any period between the late 1980's and the mid 1990's when the previous owners did not physically occupy the brick building as a single dwellinghouse. As such, there was no period within which the Council could not have taken enforcement action.
18. Against that background, the Council conceded that, on the balance of probability, the previous owners' occupation of the brick building as a single dwellinghouse lasted longer than 4 years, without material interruption. The previous owners' use of the brick building as a single dwellinghouse therefore achieved immunity from enforcement action and had become lawful at some point in time. However, the Council go on to argue that the period of non-occupation following the previous owners' relocation, coupled with the condition of the brick building when the appellant purchased the land, demonstrates that any established use as a dwelling has been lost by operation of law. The claim is that the change in the use of the brick building to a use as a single dwellinghouse has been abandoned.

Relevant case law

19. 'Abandonment' is a legal concept used by the Courts to describe the circumstances in which rights to resume a use which has been lawfully carried on in the past may be lost because of the cessation of that use. However, it was established in *Panton*⁴ that a use that was merely dormant or inactive could still be 'existing' so long as it had already become lawful and had not been extinguished.
20. In *Hartley*⁵, Lord Denning found that if a building or land remains "*..unused for a considerable time, in such circumstances that a reasonable man might conclude that the previous use had been abandoned, then the Tribunal may hold it to have been abandoned*".
21. In *Castell-y-Mynach*⁶, the Court established four criteria for assessing whether a use had been abandoned. These are: (1) the physical condition of the building; (2) the period of non-use; (3) whether there has been any other use; and (4) the owner's intentions.
22. In *Hughes*⁷ the Court of Appeal held, on the authority of *Hartley*, that the test of the owner's intentions should be objective and not subjective. The intentions of Mr Hughes and of the previous owner, although relevant factors to be considered, could not be decisive because the test was the view to be taken by "a reasonable man with knowledge of all the relevant circumstances". Evaluating all the four criteria established in *Castell-y-Mynach*, the Inspector had been entitled to conclude that the residential use had been abandoned.

² *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226

³ *Swale BC v FSS & Lee* [2005] EWCA Civ 1568

⁴ *Panton and Farmer v SSETR & Vale of White Horse DC* [1999] JPL461

⁵ *Hartley v MHLG* [1970] 1 QB 413

⁶ *The Trustees of Castell-y-Mynach Estate v Taff-Ely BC* [1985] JPL 40

⁷ *Hughes v SSETR & South Holland DC* [2000] JPL 826

Physical condition

23. While the Council has no evidence of its own, it suggests that the lack of kitchen and bathroom facilities at the time of the appellant's purchase contribute to the abandonment of the brick building's use as a dwelling. The appellant's evidence however asserts that, despite several broken windowpanes, the brick building consisted of a watertight shell at the time of his purchase. His evidence also describes the refurbishment of the building as including the repair of several windows and the fitting of kitchen and bathroom facilities. From the evidence before me, there is no suggestion that the brick building was derelict or that it needed to be subjected to considerable structural works for it to be fit for human habitation. The refurbishment works undertaken included the reconnection of kitchen and shower room fittings and the installation of a small number of cupboards and worktops, along with redecorations. Given the small size of the brick building, the refurbishment works would have been completed in a short space of time and I find them to be not excessive in nature and scale.
24. The previous landowner, in their sworn declaration, confirms that they continued to maintain the land following their relocation. However, following a family bereavement, in late 2014, their enthusiasm for maintaining the land waned and they advertised the property for sale. Given the nature of the land, it is unsurprising that it became overgrown in a relatively short period of time prior to the appellant's purchase.
25. While the physical condition of the brick building and the land is not by itself decisive, taking account of the relative ease by which the appellant brought the brick building back into a habitable condition and tidied the land, I have no doubt that the brick building was in a reasonable condition.

Period of non-use and whether there has been any other use

26. There is no dispute that the brick building was not occupied between the previous owners' relocation and the appellant taking up residence, a period of some 20 years. The previous owner's sworn declaration does however confirm that they and their family spent time on the land for residential purposes during that period. This period is also not substantial in the overall lifetime of a permanent building. The presence of litter and other rubbish in the brick building and evidence of vandalism at the time of the appellant's purchase may demonstrate that unauthorised persons had accessed the land and brick building, but the presence of trespassers sheltering in the brick building for anti-social purposes does not amount to a MCU.
27. The appellant and Council agreed that there has been no intervening use of the brick building between the previous owners moving out and the appellant moving in. Based on the evidence before me there is no reason for me to disagree with that agreement.

The owner's intentions

28. There is no evidence to make less than credible the previous owners' confirmation that it was their firm intention to continue using the brick building as a single dwellinghouse but a change in personal circumstances got in the way. This is corroborated by their continued payment of Council Tax. It seems likely to me that where there is no intention to continue the residential

occupation of a dwelling, the owner would have sought to have the property removed from the Council Tax register. This action would have avoided the potential cost in maintaining the property, which would have been a significant amount given the period of time. Furthermore, the former owner built a specially adapted boat to deliver maintenance machinery to the land after they relocated and before selling the land. That boat is now owned by the appellant. Furthermore, when they sold the land, the property description set out in the sales particular's states '*Includes a bungalow requiring refurbishment*'. Upon purchasing the land, the appellant contacted the Council and made their intentions of living in the brick building known⁸.

29. While not decisive in its own right, the intentions of the owner are relevant, and in this instance the payment of what must have amounted to a considerable sum of Council Tax, coupled with their building of a purpose built boat to enable them to take maintenance machinery on to the land, demonstrates that their intention to continue the residential use of the land was more than probable.

Conclusion on abandonment

30. In determining whether there has been abandonment the proper test, is the view taken by "*a reasonable man with knowledge of all the relevant circumstances*". It seems likely to me, on the balance of the evidence, that the previous owners intended to continue the use of the brick building as a single dwellinghouse. Furthermore, while I acknowledge that the appellant spoke to Rothley and Sileby Parish Councils, based on their local knowledge and the evidence provided by the appellant, they expressed their support for the continued residential use of the land. For all the above reasons, I conclude that a reasonable person taking an objective view and having knowledge of all the facts and circumstances would consider that the use as a single dwellinghouse had not been abandoned.

Conclusion on ground (d)

31. It was agreed by the Council that the previous owners' use of the brick building as a single dwellinghouse was lawful. In drawing all the relevant factors together, I find that while the use was inactive, on the balance of probability, it had not been extinguished by abandonment. The brick building became a dwelling before 14 September 2016 and it was used as a single dwellinghouse for a continuous period of 4 years without significant interruption.
32. For the reasons given above, the appeal on ground (d) succeeds insofar as it relates to the use of a brick building as a single dwellinghouse.

Ground (c) appeal - erection of buildings and structures

33. The ground (d) appeal has succeeded insofar as it relates to the use of a brick building as a single dwellinghouse. The dwellinghouse has the benefit of permitted development rights and those relevant to this case are set out in Classes A and E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)(the GPDO). Class A relates to the enlargement, improvement or other alteration of a dwellinghouse, subject to the specified conditions and limitations. The decking would fall under Class A. Class E relates to the provision of buildings etc

⁸ Debbie Mahoney's email dated 11 March 2016

incidental to the enjoyment of a dwellinghouse, subject to conditions and limitations. The buildings and other structures would fall to be considered under Class E.

34. The decking is accessed via a number of steps leading up from ground level. Measurements agreed on site confirmed the decking to be 0.7 m above ground level. The decking is therefore a raised platform, which is a form of development excluded by Class A.1(k). The decking could not have been granted planning permission by Article 3(1) of the GPDO.
35. There is no dispute that the buildings and structures have been erected within the curtilage of the 'dwellinghouse' or that they are incidental to the residential use. The total area of ground covered by the buildings and structures does not exceed 50% of the total area of curtilage. Given the unusual nature of the land, a judgement needs to be made as to which is the principal elevation of the dwellinghouse.
36. The GPDO does not provide a definition of 'principal elevation'. The Permitted Development Rights for Householders Technical Guidance however offers the following advice:

'In most cases the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house.'
37. In this case, there is no highway serving the dwellinghouse, the navigable channel of the River Soar passes adjacent to the western elevation, with a back water running around the remainder of the island. Rothley lies to the west of the island and the appellant confirmed that the property has a Rothley postcode. While the western elevation does have windows, it does not contain any form of entrance. The north elevation contains an entrance door which leads from the decking into the kitchen. The east elevation contains the main architectural features, including patio doors, and this faces east, towards the pontoons, which facilitate access to the island. The southern elevation contains no features.
38. Having regard to all these factors, an argument could be made for the western elevation to be the 'principal elevation'. However, given the pontoons facilitate access to the island and the eastern elevation is the elevation that people see first when arriving on the island, it would be reasonable to conclude this is the 'front' elevation. I therefore find that the east elevation is the principal elevation for the purposes of assessing permitted development.
39. The position of the dwellinghouse is such that all the buildings and other structures are situated on land forward of a wall forming the principal elevation of the original dwellinghouse. They are therefore development excluded by Class E.1(c).
40. The appeal on ground (c) fails, insofar as it relates to the alleged operational development.

Ground (a) appeal and the deemed application

41. I have found the use of the brick building as a single dwellinghouse to be lawful, due to the passage of time. The appeal on ground (a) is confined to the erection of buildings and structures associated with that dwellinghouse, which would constitute minor development as defined in the PPG. The **main issues** are:

- The effects of flooding
- The effects on the Local Wildlife Site
- The effects on character and appearance

Flooding

42. The land lies in flood zone 3b, the functional floodplain defined for the River Soar. The appellant has provided a site-specific Flood Risk Assessment (FRA).
43. Policy CS16 of the Charnwood Local Plan 2011 to 2028 Core Strategy (2015) (the CLPCS) requires that, where development is in a flood risk area, mitigation measures must be in place to reduce the effects of flood water.
44. While objecting to the principal of residential development, the Environment Agency (the EA), in the event that planning permission were to be granted, requested the imposition of conditions requiring the submission and approval of a further FRA, a flood evacuation plan and compensatory measures for loss of floodplain. The further FRA and flood evacuation plan relate to the use of the brick building as a single dwellinghouse. As I have found this to be lawful, the imposition of these conditions would not meet the relevant tests. The need for compensatory measures is addressed below.
45. The PPG⁹ confirms that essential utility infrastructure which has to be located in a flood risk area for operational reasons is 'essential infrastructure'. The EA confirmed that the solar shed and the water bore shed would represent essential utility infrastructure. Householder development is not given a flood risk vulnerability classification, none of the erected buildings or structures are however used as habitable accommodation.
46. The PPG confirms that the Exception Test need not be applied to minor development¹⁰, such as this. The PPG¹¹ also confirms that minor developments are unlikely to raise significant flood risk issues unless, amongst other things, the cumulative impact of such developments would have a significant effect on local flood storage capacity or flood flows.
47. The buildings are all raised above ground level on stilts and, while the Environment Agency does not accept the use of stilts as a means of mitigation, this coupled with the limited floor area of each of the buildings ensures that they do not have any significant effect on local flood storage capacity. Flood flows over the island are affected by the mature trees located around its periphery and interior. The buildings and structures would therefore have no significant effect on flood flows over and above what would have existed before they were erected.

⁹ PPG Table 2, paragraph 066 Reference ID: 7-066-20140306

¹⁰ Paragraph 164 of the revised National Planning Policy Framework

¹¹ PPG paragraph: 047 Reference ID: 7-047-20150415

48. The buildings and structures are elevated above the ground and their construction and purpose are such that they would be unaffected by flood water ingress. The size of the buildings and structures means that they are unlikely to be 'occupied' during a flood event. There would be no need for mitigation measures to be imposed to reduce the effects of flood water ingress on these buildings and structures.
49. For the reasons given above the development does not conflict with policy CS16 of the CLPCS or the Framework, which seek to ensure that developments remain safe from flooding or suitable mitigation measures are in place.

Local Wildlife Site

50. The designation of the River Soar as a local wildlife site (LWS) is not a statutory designation and as such there is no 'definitive map' which defines its boundaries. The designation criteria for the LWS include the provision of a 6 m buffer to the banks of the river. Given the purpose of the designation it would make little sense for the riverbanks to be excluded from the designation and I find that the non-statutory designation would encompass land forming part of the island.
51. The use of the brick building as a single dwellinghouse has been established as being lawful, and its occupation will have some effects on the habitat and wildlife found on the land. The operational development carried out is however small scale and any loss of habitat that has occurred would be negligible. Biodiversity enhancements to address the negligible loss of habitat can be secured by condition.
52. For the reasons given above the development would not conflict with policy CS13 of the CLPCS, which seeks, amongst other things, to conserve and enhance the natural environment for its own value through the provision of adequate mitigation.

Character and appearance

53. The land is in the open countryside and its use as a single dwellinghouse is lawful. The appellant is living a self-sufficient, and aiming for a carbon neutral, lifestyle. The dwellinghouse is small scale and, beyond providing facilities for everyday domestic activities, it has little capacity to accommodate domestic storage facilities. The erection of ancillary buildings and structures to house the appellant's water supply, water storage, heating fuel and electricity generation equipment etc is to be expected, as mains services are not available. The tool shed and polytunnel contribute to the appellant's self-sufficient lifestyle.
54. The buildings are small scale and while most are somewhat higher than would normally be expected, to mitigate flood risk, their height is still not excessive or visually intrusive. The buildings and structures are constructed predominantly of natural materials and existing structures and materials found on the island have been re-used where possible. Most of the buildings and structures are screened by mature trees. While the polytunnel can be seen from the adjacent riverbanks, it is not an unexpected feature in the countryside, where land is used for food production.
55. For these reasons, the development has no significant effect on character and appearance and complies with policies CS2 and CS11 of the CLPCS and saved policies EV1 and CT2 of the Borough of Charnwood Local Plan 1991- 2006

Written Statement (January 2004), which seek amongst other things, to deliver high quality development, which is of a scale compatible with the locality, reduce the impacts of climate change, and safeguards the countryside from unacceptable development.

Conditions

56. The Council provided a list of 7 suggested conditions and further conditions were suggested by the Environment Agency. As I have found the use as a single dwellinghouse to be lawful due to the passage of time, the imposition of conditions relating to the provision of water supply, sewage disposal, and mitigating flood risk would not meet the relevant tests.
57. The removal of permitted development rights for means of enclosure, incidental buildings, structures and areas of hard standing are necessary to ensure that any future development proposals incorporate suitable flood mitigation measures and do not adversely affect flood water storage capacity or flood flows over the land.
58. The submission of an Ecological Enhancement and Management Plan is necessary to conserve and enhance biodiversity on the land and mitigate any loss of habitat as a result of the erection of the buildings and structures. As the development has already occurred, it is necessary to impose a sanction to ensure the condition is enforceable in the event of non-compliance.

Conclusion on ground (a)

59. For the reasons given above, the appeal on ground (a) succeeds in so far as it relates to the erection of buildings and structures.

Overall conclusions

60. From the evidence before me, and on the balance of probabilities, the appeal on ground (d) shall succeed, following the correction of the notice, in respect of the material change of use of the brick building as a single dwellinghouse.
61. In respect of the erection of buildings and structures associated with the residential use, for the reasons given above, the appeal shall succeed on ground (a) and I shall grant planning permission for the erection of buildings and structures associated with the residential use. The appeal on ground (f) does not therefore fall to be considered, because the notice will be quashed.

Formal decision

62. The appeal on ground (d) succeeds insofar as it relates to the material change of use of the brick building as a single dwellinghouse and it is directed that the enforcement notice is corrected by:

The deletion of the words 'change of use of the Land to residential use and the erection of buildings and structures associated with the residential use' and substitution of the words 'the erection of buildings and structures associated with the residential use' in paragraph 3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL.

It is further directed that the enforcement notice is varied by:

The deletion of the words '23 October 2021 being 12 months from the date this notice takes effect' and substitution of the words '12 months from the date this notice takes effect' in paragraph 6. TIME FOR COMPLIANCE.

63. Subject to the correction and variation, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the operational development already carried out, namely the erection of buildings and structures associated with the residential use at Rayn's Island, Rothley, Leicestershire LE7 7NL as shown on the plan attached to the notice and subject to the conditions set out in the attached schedule.

M Madge

INSPECTOR

SCHEDULE OF CONDITIONS

- (a) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended), (or any order revoking and re-enacting that Order, with or without modifications), no gate, fence, wall or other means of enclosure shall be erected on any part of the site.
- (b) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended), (or any order revoking and re-enacting that Order, with or without modifications), no enlargement, improvement or other alteration of the dwelling shall be carried out and no building, enclosure or other structure shall be erected or any hard surface constructed on any part of the site.
- (c) The buildings and structures associated with the residential use hereby permitted shall be demolished to ground level and all equipment and materials brought on to the land for the purposes of facilitating their erection shall be removed within 30 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
- (i) Within 2 months of the date of this permission an Biodiversity Enhancement and Management Plan (BEMP) shall be submitted to and approved in writing by the local planning authority. The BEMP shall provide full details of all ecological mitigation, enhancement and management measures and a timetable for their implementation and monitoring for each element of the Plan. The BEMP shall include, but not be limited to:
- Measures for the on-going management of all trees and other landscape features;
 - Full details of any new tree or shrub planting, noting species, sizes, numbers and densities of plants; and
 - Measures to enhance habitat for grass snakes, Kingfishers, bats and invertebrates.
- The approved BEMP shall be implemented in its entirety in accordance with the approved timetable.
- (ii) If within 10 months of the date of this decision the local planning authority refuse to approve the BEMP or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- (iii) If the appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- (iv) The approved BEMP shall have been carried out, completed and managed in accordance with the approved timetable.
- In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

APPEARANCES

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