

**Application Number**

P/2013/0421

**Site Address**2 Fore Street  
Brixham  
Devon  
TQ5 8DS**Case Officer**

Mr Scott Jones

**Ward**

Berry Head With Furzeham

**Description**

Variation of Condition 2 to previously approved scheme P/2012/0910, Revised wording of condition in respect to the Herring Gull Nesting Season

**Executive Summary/Key Outcomes**

The proposal seeks to amend the wording of Condition 02 attached to the previously approved planning consent for the demolition and redevelopment of 2 and 2a Fore Street, Brixham (Commonly known as the “Threshers” building).

At present Condition 02 prohibits demolition and redevelopment through the Herring Gull breeding season.

The application seeks to amend the wording to permit demolition and redevelopment during the bird breeding season. This is so long as a suitably qualified ecologist considers that the works would not contravene the provisions of the Wildlife and Countryside Act 1981 (As Amended), which is the relevant statutory instrument that affords protection to wild birds, their nests and eggs.

It is considered that the revised wording retains the objectives of the existing condition, i.e. to afford suitable protection to nesting birds.

**Recommendation**

Approval; Subject to the receipt of no further representations that raise any new issues deemed significant by the Executive Head of Spatial Planning in consultation with the Development Management Committee Chair; Revised wording of the condition to be;

“No demolition shall take place during the bird breeding season, unless the building, rooftop and its immediate proximity has been inspected by a suitably qualified ecologist with full knowledge of the proposed demolition program and processes, and the ecologist concludes that the development would not contravene protection afforded within the Wildlife and Countryside Act (As Amended).

In the event that demolition is to be undertaken during the bird breeding season, no demolition shall take place until a copy of the ecologists' report confirming the acceptability of the demolition program and process has been submitted to the Local Planning Authority.

Reason: To afford suitable protection to wild nesting birds, in accordance with the provision of the Wildlife and Countryside Act 1981 (As Amended) and Policy NC5 of the Saved Local Plan”

### **Statutory Determination Period**

8 weeks

### **Site Details**

“Threshers” building, 2 and 2a Fore Street, Brixham.

### **Detailed Proposals**

Amend wording of Condition 02 from;

*“No works of demolition shall be carried out during the breeding season for Herring Gulls (April to June)”.*

To;

*“No demolition shall take place during the bird breeding season, unless the building, rooftop and its immediate proximity has been inspected by a suitably qualified ecologist with full knowledge of the proposed demolition program and processes, and the ecologist concludes that the development would not contravene protection afforded within the Wildlife and Countryside Act (As Amended)”.*

In the event that demolition is to be undertaken during the bird breeding season, no demolition shall take place until a copy of the ecologists' report confirming the acceptability of the demolition program and process has been submitted to the Local Planning Authority.

Reason: To afford suitable protection to wild nesting birds, in accordance with the provision of the Wildlife and Countryside Act 1981 (As Amended) and Policy NC5 of the Saved Local Plan”

### **Summary Of Consultation Responses**

None.

### **Summary Of Representations**

Pending representations received during the consultation period 25th April – 16th May. Any representation received before 09 May will be reported to the Committee Meeting. As the committee meeting will take place prior to the expiration of the 21 day consultation period, the recommendation is also subject to the receipt of no further representations that raise any new issues deemed significant by the Executive Head of Spatial Planning in consultation with the Development Management Committee Chair.

### **Relevant Planning History**

P/2010/1189	Demolition of 2 and 2A Fore Street - PER - 22/03/2011
P/2010/1192	Demolition of 2 and 2A Fore Street; Alterations and works to form junction realignment; formation of new ground floor retail and 2 number first floor apartments - PER - 08/03/2011
P/2012/0910	Demolition of 2 and 2A Fore Street - PER - 16/04/2013
P/2012/0911	Demolition of 2 and 2A Fore Street; junction realignment and replace with 2 ground floor retail units and 2 first floor apartments - PER - 16/04/2013

### **Key Issues/Material Considerations**

#### **Principle and Planning Policy -**

The proposal seeks to amend the wording of Condition 02 attached to the previously approved planning consent.

At present Condition 02 prohibits demolition and redevelopment through the Herring Gull breeding season.

The application seeks to amend the wording to permit demolition and redevelopment during the bird breeding season, should a suitably qualified ecologist consider that it would not contravene the provisions of the Wildlife and Countryside Act 1981 (As Amended), which is the relevant statutory instrument that affords protection to wild birds, their nests and eggs.

The revised wording will only permit demolition in the event that a suitably qualified ecologist is satisfied that the protection afforded birds under the Wildlife and Countryside Act 1981 (As Amended) would not be contravened. The revised wording retains the objectives behind the original condition (to protect wild nesting birds), but provides increased flexibility to enable works to proceed during the nesting season, in the event that birds would not be unduly affected. This is considered to be consistent with the tests of necessity and reasonableness set out in the conditions Circular 11/95.

### **Conclusions**

The revised wording retains the key objective, which is to afford wild nesting birds suitable protection. The variation to the condition provides a more reasonable solution, by enabling demolition to proceed where expert advice confirms that wild nesting birds will not be harmed / unduly affected by the demolition process. As such the application to vary the condition should be approved.

### **Condition(s)/Reason(s)**

01. No demolition shall take place during the bird breeding season, unless the building, rooftop and its immediate proximity has been inspected by a suitably qualified ecologist with full knowledge of the proposed demolition program and processes, and the ecologist concludes that the development would not contravene protection afforded within the Wildlife and Countryside Act (As Amended). In the event that demolition is to be undertaken during the bird breeding season, no demolition shall take place until a copy of the ecologists' report confirming the acceptability of the demolition program and process has been submitted to the Local Planning Authority. Reason: To afford suitable protection to wild nesting birds, in accordance with the provision of the Wildlife and Countryside Act 1981 (As Amended) and Policy NC5 of the Saved Local Plan.

### **Relevant Policies**

NC5 Protected species