

Application Number

P/2011/0968

Site AddressBench House
Blackball Lane
Brixham
Devon
TQ5 8AX**Case Officer**

Mr John Burton

Ward

Berry Head With Furzeham

Description

Variation of condition 3 of permission P/2011/0039 (seeking accordance with the recommendation of the bat hibernation roost survey and memorandum date 06.01.2011)

Executive Summary/Key Outcomes

This application seeks the variation of a condition which was intended to ensure that works would not be carried out during the roosting season for bats. The Applicant has involved an ecologist and bat expert to assist in all stages of the work that has been undertaken to date, and no bats have so far been found. Natural England have still not given a definitive answer as to whether or not bats would be affected by the proposal to vary the condition. However, there is now a body of evidence to suggest that this is unlikely.

Recommendation

Subject to the further views of Natural England; Approval to the variation of the condition.

Site Details

Unlisted lime kilns mainly under existing ground levels at the site of Bench House, a residential property with access to Blackball Lane, but situated above the road, due to the lie of the land. The site is situated opposite Dalverton Court.

Detailed Proposals

Earlier this year Development and Conservation Planning received an application for works and alterations to widen Blackball Lane by altering the residential curtilage to Bench House and the creation of a new retaining wall. The planning application was submitted along with an application for Conservation Area consent to cover the works of demolition. Both applications were made on behalf of the Torbay Development Agency by Jacobs Engineering U.K. Ltd.

At the same time an application was made by the Agent to English heritage for a Certificate of Immunity from listing. A certificate is a legal guarantee that the building or buildings named in it will not be statutorily listed as being of special

architectural or historic interest during the five years from the date on which the certificate is signed. The issue of a certificate also prevents the Local Planning Authority from serving a Building Preservation Notice (BPN) on the property during this period. The certificate is defined by Section 6 of the Planning (Listed Buildings and Conservation Areas) Act 1990. In England the decision to award immunity follows an investigation by English Heritage and is made by the Secretary of State for Culture, Media and Sport. The certificate was issued clearly establishing that the kilns were not worthy of listing and this informed the officer's recommendation to the development management Committee, which was one of approval to both applications.

The historic lime kiln is not a listed structure and it is considered that the loss of this structure is acceptable given the proposed re-alignment using stone reclaimed from the site and given the access and regeneration objectives driving this proposal.

Both the planning application and application for conservation area consent were presented to Members at their meeting on 21st March this year. Both applications were approved by Members subject to conditions and as such permission is extant for the loss of the lime kiln.

Condition 3 of the approval to the planning application stipulates that:-

"The proposal hereby approved shall be carried out entirely in accordance with the recommendations of the bat hibernation roost survey and the memorandum dated 6th January 2011. The specifications and recommendations of the memorandum shall be strictly adhered to and carried out in full as prescribed.

Reason: The site contains two old lime kilns which could have some potential as a bat hibernation roost, which is a species of wildlife protected in law. This makes it imperative that the proposal is implemented entirely in accordance with the specialist report in the interests of wildlife and to order to ensure accordance with The Countryside and Wildlife Act and policies NCS and NC5 of the Saved Adopted Torbay Local Plan."

The applicant has now applied to vary this condition primarily because they wish to carry out the works at a different time from that specified in the original bat survey. As bats are a protected species Natural England were consulted for a view on the acceptability of this proposal and whether the alternative mitigating measures are appropriate. The initial response from Natural England was generic and not site specific and on this basis a more helpful response is being sought from Natural England.

Summary Of Consultation Responses

Natural England: Made no comments with the original application and have responded in general terms to this current application. Their further specific observations have been sought.

Summary Of Representations

Received and reproduced at page B.201.

Relevant Planning History

P/2011/0039/PA Demolition works and alterations to form road widening, reduction of residential curtilage and formation of new retaining wall topped by new railings, approved March 2011

P/2011/0040/CA Conservation area consent for demolition works in association with this application, approved March 2011.

Relevant Policies

TU1 Harbourside and waterfront regeneration
NCS Nature Conservation Strategy
NC5 Protected species
T6.3 New access to Fish Quays and Oxen Cove as part of Brixham Harbour regeneration.
T20 Road improvements.

Key Issues/Material Considerations

The only consideration with this application is whether or not the proposed change to the condition would adversely impact upon bats. Bats are a species protected in law and any impact upon their roost, whether knowingly or not, would therefore be a criminal offence.

It is true that some works have taken place in advance of the formal decision on the current application to vary the condition. However, those works were done under the strict supervision of a bat expert. As no bats were found to be present in the lime kilns it is not considered that any offence has occurred. In the absence of any offence having occurred and given that the actions taken would not require planning permission in their own right (as the works did not constitute 'development' under s55 of the Town and Country Planning Act 1990), it would not be expedient to take any action at this stage.

The change to the condition sought is made in the interests of expediency as it would not help the tourist trade or the general operation of Brixham harbourside to attempt the works during the prime tourist and summer season.

There is no indication that bats would be affected by the proposal, but it is deemed sensible to report the further advice from Natural England. This will be available for Members to take into account, but may have to be reported verbally.

Failure to have clear evidence that bats would not be affected would make the proposal contrary to the wildlife policies of the Saved Adopted Torbay Local Plan.

S106/CIL -

There are not considered to be any legal considerations that could mitigate potential impact, and so a s106 agreement would not be appropriate.

Conclusions

Subject to confirmation from Natural England, that they are satisfied that the change to the condition would not have an adverse impact on the bats, it is considered that this variation of conditions should be approved.

Relevant Policies

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