

REMOVAL OF CONDITION 15 ON PLANNING PERMISSION F/02014/10/CM

AT: Lyons Farm, Wimblington Fen, Wimblington
LPA REF: F/02004/14/CM
FOR: Nicholas Farms

To: **Planning Committee**
Date: **4th September 2014**
From: **Acting Head of Growth & Economy**
Electoral division(s): **Forty Foot**
Purpose: **To consider the above planning application**

Recommendation: That planning permission F/02014/10/CM be varied by the removal of condition 15.

<i>Officer contact:</i>	
Name:	Mike Abbott
Post:	Development Management Officer
Email:	Michael.Abbott@cambridgeshire.gov.uk
Tel:	01223 715331

1.0 INTRODUCTION

- 1.1 Planning Permission F/02014/10/CM for the construction of two agricultural reservoirs was granted on 26th April 2012. The construction of the reservoirs, which involves the removal of sand and gravel from the site, commenced on 8th January 2013 and has progressed well to date. The operations are required to be complete by January 2017.

- 1.2 Condition 15 reads as follows:

A written record shall be maintained at the site office of all movements in and out of the site by Heavy Commercial Vehicles. Such records shall contain the vehicle's registration and operating company's identity and time/date of movement. The records shall be made available for inspection by the Mineral Planning Authority if requested and retained for duration of not less than one month.

Reason: *In the interest of amenity, to enable the Mineral Planning Authority to monitor the operations and to comply with Policy CS34 of the Cambridgeshire and Peterborough Minerals and Waste Development Plan (Core Strategy) 2011.*

- 1.3 The operator has not been maintaining such records and this has been recorded as a non-compliance issue on site monitoring reports. As a result, the operator has submitted an application to remove the condition.

2.0 THE SITE

- 2.1 The site, edged in red on Plan CCC1 lies to the west of Manea, in the parish of Wimblington, with access onto Byall Fen Drove. The operations are subject to a lorry routing agreement between the site and the mineral processing plant at Block Fen. All vehicles are required to turn right out of the site.

3.0 THE PROPOSAL

- 3.1 The applicant requests the removal of condition 15, noting that, other than limiting operational hours on site, there is no other condition placing a restriction on the number of vehicles using the site. It is therefore argued that condition 15 serves no useful purpose and is '*monitoring for monitoring's sake*'. The application draws attention to the 'tests' for planning conditions set out in Government guidance and argues that, in this case, the condition is not necessary nor relevant to the development permitted and is not therefore reasonable.

4.0 CONSULTATIONS AND PUBLICITY

- 4.1 The application was advertised by a site notice and both Wimblington and Manea Parish Councils were consulted, as well as Fenland District Council. The District raises no objection.
- 4.2 Wimblington Parish Council initially objected to the application, stating simply that it *'did not agree with the removal of condition 15'*. Since an application cannot be refused without sound reasons, the Parish Council was invited to amplify its concerns. This precipitated some correspondence with the Committee Clerk, during which advice was requested and given on the legal background to this application, as a result of which the Parish Council withdrew its objection.
- 4.3 An objection was subsequently received from Manea Parish Council, advising that the condition was considered still to be relevant and that *'presumably there was justification for imposing the condition originally'*. Again correspondence took place with the Parish Council, advising them of the legal considerations and asking whether there were any specific problems or issues with the site. The Parish Clerk responded on the 18th June saying, *"This is very useful, I shall report this to PC members."* However, no further formal response has been received and the Parish Council's position is therefore recorded as an outstanding objection.

5.0 PLANNING POLICY

- 5.1 There are no land use policy considerations, given that this is an existing permission, and site monitoring records indicate that the site is generally performing satisfactorily. The consideration here is essentially a legal one to be guided by paragraph 206 of the NPPF, which states,

Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

6.0 PLANNING CONSIDERATIONS

- 6.1 Conditions similar to this, requiring records of vehicle movements to be maintained and made available to the Council are commonly used, but are normally linked to a condition limiting daily movements of HCVs, the records being a means of monitoring compliance. However, there is no such requirement in this case, hence the applicant claims the condition serves no useful purpose.
- 6.2 The maintenance of records could arguably be of use in monitoring out of hours activity or for investigating complaints of HCV vehicles on routes outside of that permitted by the lorry routeing agreement. However, these matters are more readily enforceable by site monitoring, and have not been the subject of

any issues or complaints to date. Moreover, such a condition would not usually be used to monitor hours of operation and, if the keeping of records were considered necessary to enforce the routing of vehicles, this should perhaps have been more properly referred to in the legal agreement.

- 6.3 With regard to the tests set out in the NPPF, the necessity and relevance of the condition is tentatively supportable, but nevertheless debateable. The condition is not precise, in that the reason for the condition is fairly vague and does not, for example, specifically relate this to the need to use such information in connection with the investigation of complaints about the routing of vehicles. The condition does not, in itself, directly protect local amenity as suggested in the reason.
- 6.4 Even if some case could be made out for retention of the condition, the need for continued monitoring going forward could be argued to be unnecessary given the absence of complaints to date. Furthermore, the absence of site records would not significantly impede the investigation of such complaints in the future. For these reasons, there is uncertainty as to whether the condition is enforceable and whether it would be upheld by a Planning Inspector or the Courts.

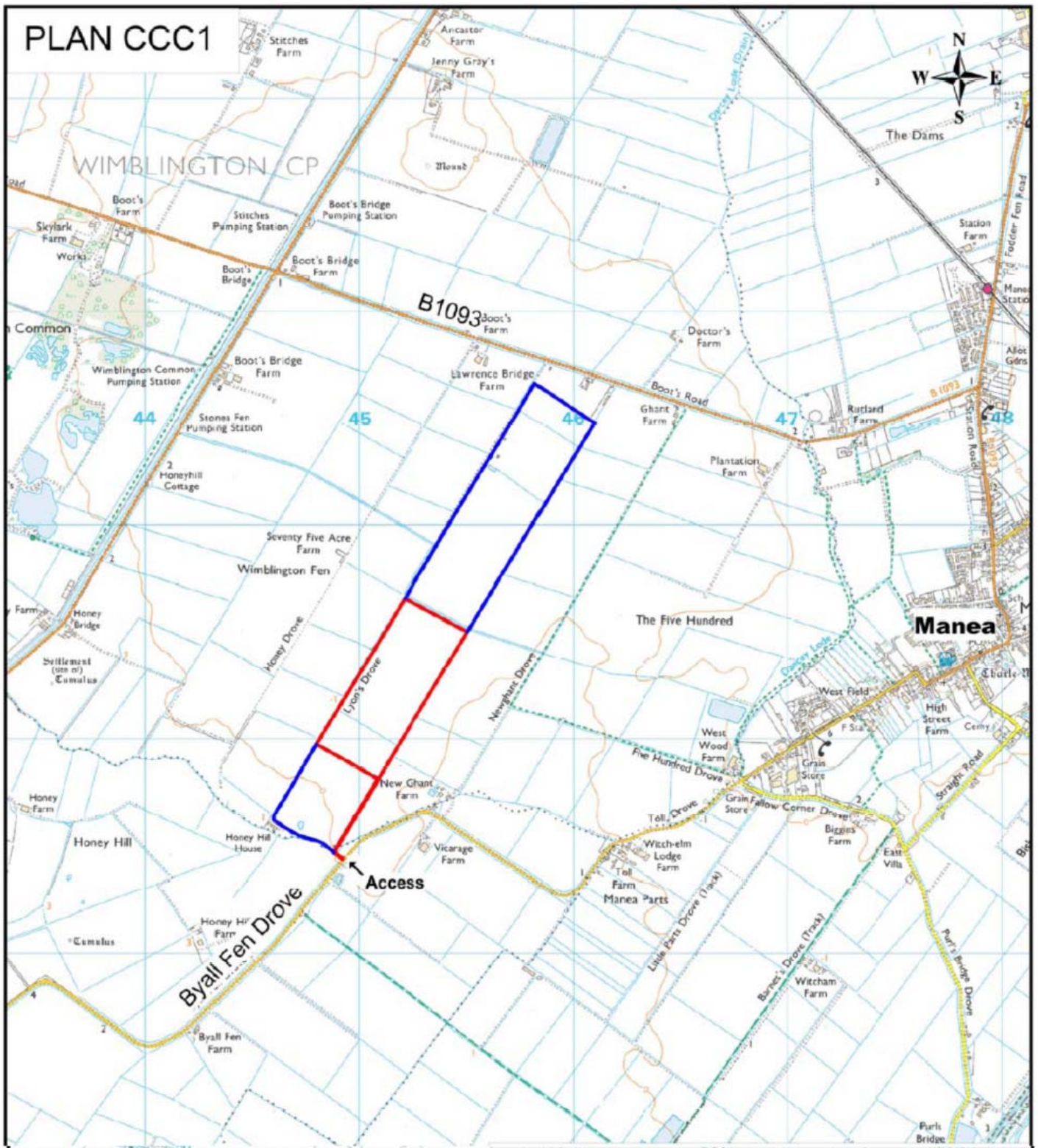
7.0 CONCLUSIONS

- 7.1 On the basis of the considerations set out above, it is acknowledged that the justification for the condition, and its enforceability, is somewhat tenuous. Moreover, it would be difficult to set out any clear need to retain and enforce this condition in the interests of local amenity. Whilst the condition has not been complied with to date, the enforcement of other conditions and obligations has not been compromised as a result.
- 7.2 On balance therefore, it is concluded that there is no strong argument for refusing the current application and retaining the condition. The outstanding objection raises no material consideration in planning terms and it is therefore proposed that the application be approved.

8.0 RECOMMENDATION

- 8.1 It is recommended that planning permission F/02014/10/CM be varied by the removal of condition 15.

PLAN CCC1



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