

Dear David,

Many thanks for sending through SES additional comments regarding the recommendation to impose a condition for the submission of a Natural England Protect Species License (condition no. 5). Firstly, we appreciate that SES have reviewed our initial response (dated 22nd Feb) and have provided us with further detail setting out their position. Having now reviewed and digested the feedback, EAD Ecologist have prepared the attached rebuttal Technical Note.

As you'll see from the enclosed, we maintain the position the pre commencement condition is not required for the following reasons:

- Not required by legislation within the Protection of Badgers Act 1992 (as amended) or the Wildlife and Countryside Act 1981 (as amended).
- NPPF guidance on applying planning conditions.

These reasons are set out in further detail under the subheadings.

Legislation Requirements

There is no prerequisite within any of the relevant legislation that requires evidence of a License to be provided to the LPA through the process of a prior to commencement discharge of condition. Any Natural England Licence attained is legally-binding on a developer, it is separate from the planning system and is not subject to a secondary-approval process by a Local Planning Authority. Please see the attached Technical Note for further details.

NPPF Guidance

NPPF provides guidance on how Local Planning Authorities should apply planning conditions, specifically Paragraph 56 of the NPPF states that:

*“Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. **Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification**”. (Boyer emphasis)*

In light of the above and given the imposition of conditions 1, 2 and 3, it is considered that all mitigation measures will be agreed via the CEMP, ensuring that all works / heavy machinery is carried within the required separation distances to any Badger setts. This, coupled with a subsequent report prepared Ecological Clerk of Works in accordance with condition 3 would effectively ensure all works are carried out are in accordance with CEMP and / or License issued by NE. As such, to ensure that planning conditions ‘are kept to a minimum’ and to ‘avoid’ ‘conditions that are required to be discharged before development commences’, we would suggest that the condition is reworded as follows:

“The works, including groundworks and vegetative clearance, shall not in any circumstances commence until it has been established if a Licence pursuant to The Protection of Badgers Act 1992 is required. Should a License be required, no commencement of development should take place until a License has

been issued by Natural England pursuant to The Protection of Badgers Act 1992 authorising the development to go ahead.

Reason: *In the interests of a UK protected species and in accordance with Somerset District Council Local Plan - Policy EQ4 Biodiversity”.*

We trust the above is agreeable but would of course welcome your thoughts on the matter.

Kind regards
Olivia

Olivia Davis
Senior Planner
Boyer
t [02921 670588](tel:02921670588) m [07546 406 167](tel:07546406167)

From: David Kenyon <david.kenyon@southsomerset.gov.uk>
Sent: Wednesday, March 8, 2023 3:45 PM
To: Olivia Davis <OliviaDavis@boyerplanning.co.uk>
Cc: Jemma Shorrocks <JemmaShorrocks@boyerplanning.co.uk>
Subject: RE: 22/03560/OUT - Land South Of Bowden Road Templecombe

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Olivia

Comments have been received from the County Ecology team at Somerset Ecology Services (SES).

SES, acting as consultants for the LPA, must be satisfied that the development is being undertaken lawfully. In this case, if SES does not have sight of the approved licence how can it be ensured that the badgers/badger setts will not be disturbed? If works come within 20-30m of the badger sett (depending on the type of works), a licence is needed in order for the development to be operating within the law.

As far as approaching Natural England to see if they will grant a licence, NE requires certain details before granting a licence, which is what SES look for before providing conditions. For example, with bat licences, NE requires that roosts are characterised. In order to characterise a roost, there usually needs to be 2-3 emergence surveys done. So, if a NE licence is needed, SES requires that the appropriate number of surveys are done to ensure a licence *could* be granted.

Thus, the County Ecology team reiterate the need for condition 5 to be applied to any grant of permission. However, the County Ecologist is happy with the rest of the conditions/amendments, including combining conditions 2 and 6.

- Accept: **Condition 1:** Prior to Commencement: Lighting Strategy

- Merge and Accept: **Condition 2 & Condition 6** : prior to commencement: CEMP Biodiversity and A Risk Avoidance Measures Method Statement (RAMMS)
- Accept: **Condition 3**: prior to occupation of each phase: certification by ECW that CEMP has been satisfied
- Accept: **Condition 4**: Landscape and Ecological Management Plan
- Accept: **Condition 7**: prior to commencement: Biodiversity Enhancement Plan (BEP)

Regards
Dave

From: David Kenyon <david.kenyon@southsomerset.gov.uk>
Sent: 08 March 2023 10:27
To: oliviadavis@boyerplanning.co.uk
Cc: Jemma Shorrocks <JemmaShorrocks@boyerplanning.co.uk>
Subject: FW: 22/03560/OUT - Land South Of Bowden Road Templecombe

Olivia

Thank you for your email, the contents of which have been forwarded to the County Ecologist for comment.

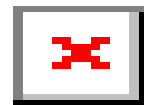
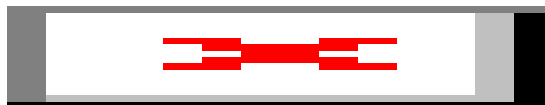
Interestingly, looking at the Government advice to LPAs regarding protected species and development, the guidance states that you can add an 'informative' note to a planning permission to make it clear that a licence is needed. The advice also goes on to state that LPAs can grant planning permission provided that, if a protected species licence is needed, then it is likely to be granted by Natural England. With that in mind, what needs to be assessed at this stage is whether such a licence is indeed needed and, if so, confirmation from Natural England that it is likely to be granted. I have raised this point with the County Ecologist and I raise it similarly with you so that your ecologist can liaise directly with the County Ecology team as to whether the licence will be required and, if so, who will approach Natural England for the stated written advice.

Regards
Dave

David Kenyon
Development Management Specialist
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From: Olivia Davis <OliviaDavis@boyerplanning.co.uk>
Sent: 22 February 2023 16:59
To: David Kenyon <david.kenyon@southsomerset.gov.uk>
Cc: Jemma Shorrocks <JemmaShorrocks@boyerplanning.co.uk>
Subject: RE: 22/03560/OUT - Land South Of Bowden Road Templecombe

Hi Dave,

Further to my email below, we've now had chance to review the Ecologist feedback (attached for reference) in full and having received advice from EAD (consultant Ecologists), the Applicant is happy to accept the imposition of the recommended conditions 1, 2, 3, 4, 6 and 7. However, we consider condition 5 to be somewhat onerous and a duplicate of the already requested information via conditions 2 and 3. I've extracted the wording of the condition below for ease of reference:

Ecology Condition 5:

Because there were several Badger setts identified on site, no works with heavy machinery should occur within 30m of a badger sett, and no general construction should occur within 20m of a sett, without a licence from NE. As such, the following condition is required:

The works, including groundworks and vegetative clearance, shall not in any circumstances commence unless the Local Planning Authority has been provided with either:

- a) a copy of the licence issued by Natural England pursuant to The Protection of Badgers Act 1992 authorising the development to go ahead; or*
- b) a statement in writing from the ecologist to the effect that he/she does not consider that the development will require a licence.*

Reason: *A pre-commencement condition in the interests of a UK protected species and in accordance with Somerset District Council Local Plan - Policy EQ4 Biodiversity.*

In light of the above, we have made the following observations:

- Firstly, given the imposition of conditions 2 and 3, we consider that all due diligence is undertaken and agreed via the CEMP, ensuring that all works / heavy machinery is carried within the required separation distances to any Badger setts. This, coupled with a subsequent report prepared Ecological Clerk of Works in accordance with condition 3 would effectively ensure all works are carried out in accordance with CEMP and / or License issues by NE.
- Secondly, in terms of the LPA receiving a copy of the NE Licensing, as this is a legally-binding document for the developer by a separate body to planning, there is no obligation for a copy to be procedurally 'submitted and approved' by the planning authority via 'discharge of condition' application. However, the Applicant is happy to agree (as an informative to the Decision Notice) that any future License (should a License be required) is presented at any given time, if requested by Planning Officer(s).

Given the above, we consider that the requirements of condition 5 can be successfully dealt with by condition 2 & 3, and the NE Licensing system. As such, we would suggest that the need for condition 5 falls away and respectfully request that the imposition of condition is reconsidered.

In summary, we therefore suggest the following 5 ecology conditions are imposed to any future permission:

- Accept: **Condition 1:** Prior to Commencement: Lighting Strategy
- Merge and Accept: **Condition 2 & Condition 6:** : prior to commencement: CEMP Biodiversity and A Risk Avoidance Measures Method Statement (RAMMS)
- Accept: **Condition 3:** prior to occupation of each phase: certification by ECW that CEMP has been satisfied
- Accept: **Condition 4:** Landscape and Ecological Management Plan
- Accept: **Condition 7:** prior to commencement: Biodiversity Enhancement Plan (BEP)

We would of course welcome your thoughts on the above and look forward to hearing from you.

Many thanks
Olivia

Olivia Davis
Senior Planner
Boyer

t [02921 670588](tel:02921670588) m [07546 406 167](tel:07546406167)

From: Olivia Davis <OliviaDavis@boyerplanning.co.uk>

Sent: Tuesday, February 21, 2023 4:06 PM

To: David Kenyon <david.kenyon@southsomerset.gov.uk>

Cc: Jemma Shorrocks <JemmaShorrocks@boyerplanning.co.uk>

Subject: RE: 22/03560/OUT - Land South Of Bowden Road Templecombe [Filed 21 Feb 2023 16:06]

Good afternoon Dave,

I hope all is well with you?

It's good to see that the application has received further consultation responses over the past week or so, and that the feedback to the application remains broadly positive.

To keep you in the loop, we have reviewed all the responses and are actioning the following as a result of some of the comments received:

- **Highways:** the Framework Travel Plan is being amended and will be submitted later this week.
- **Landscape:** the comments are being reviewed and amendments to the scheme will be progressed / additional information as requested will be submitted shortly.
- **Drainage:** suds comments in relation to wet basins is being explored and we will feedback on this point in full asap.
- **Ecology:** the suite of recommended conditions are being reviewed and we will respond in full asap.

As an aside, it's our understanding that we are awaiting comments from:

- Abbas and Templecombe Parish Council;
- SSDC Strategic Planning

- SSDC Housing
- Wessex Water
- County PROW
- County Education Authority
- Somerset Waste.

Are you able to advise when consultation concludes for this application please?

As previously mentioned, we are increasingly eager to set up a call with you to discuss the progress of the application to date and to update you on the expression of interest we've had from Templecombe GP Surgery regarding the community area. If you could let us know your availability, perhaps throughout early March time, it would be very much appreciated.

Many thanks
Olivia

Olivia Davis
Senior Planner
Boyer

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From: Olivia Davis <OliviaDavis@boyerplanning.co.uk>

Sent: Tuesday, February 14, 2023 2:01 PM

To: Jemma Shorrocks <JemmaShorrocks@boyerplanning.co.uk>; David Kenyon <david.kenyon@southsomerset.gov.uk>

Subject: RE: 22/03560/OUT - Land South Of Bowden Road Templecombe [Filed 15 Feb 2023 08:32]

Good afternoon Dave,

Further to Jemma's email below, we wondered if you'd yet had chance to review the planning statement and supporting material for the above application and if so, whether you have any initial comments? Sorry if it seems as though we're chasing, it's just we're keen to have a discussion with you to discuss the proposal in more detail and update you on the positive interest / conservations we've had in relation to the proposed community use.

If you could let us know when you're available for a quick Teams meeting or phone call, we'd appreciate it.

We look forward to hearing from you.

Many thanks
Olivia

Olivia Davis
Senior Planner
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From: Jemma Shorrock <JemmaShorrock@boyerplanning.co.uk>
Sent: Thursday, February 9, 2023 9:11 AM
To: Olivia Davis <OliviaDavis@boyerplanning.co.uk>; David Kenyon <david.kenyon@southsomerset.gov.uk>
Subject: RE: 22/03560/OUT - Land South Of Bowden Road Templecombe

Morning Dave,

Further to Olivia's email below, we were just discussing the application internally and we are wondering what the best number is to reach you on to talk through the outstanding consultee responses and the potential to meet with you virtually to discuss any concerns you may have relating to technical matters?

We look forward to hearing from you.

Kind regards,

Jemma

Jemma Shorrock
Associate Director
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From: Olivia Davis <OliviaDavis@boyerplanning.co.uk>
Sent: 07 February 2023 12:22
To: David Kenyon <david.kenyon@southsomerset.gov.uk>
Cc: Jemma Shorrock <JemmaShorrock@boyerplanning.co.uk>
Subject: 22/03560/OUT - Land South Of Bowden Road Templecombe [Filed 07 Feb 2023 12:22]

Dear Dave,

I hope all is well with you.

Following validation of the outline application, we have been closely monitoring the consultee responses received to date and are in the process of review / actioning any amendments required however, overall, there appears to be no objections in principle and/or any unresolvable concerns expressed. We note consultation is still ongoing and that the determination date for the application is 14th April however, we wondered whether you would be available for a virtual meeting to discuss the proposal in more detail and run through any comments you may have in the meantime? If you could provide us with a few suggested dates with your availability over the next week or so, we'll look to agree a date and time which best suits you.

Please don't hesitate to get in touch should you have any initial comments in the meantime.

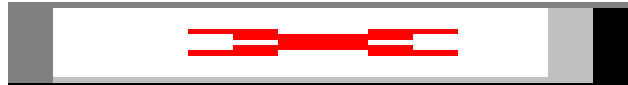
We look forward to hearing from you soon.

Many thanks
Olivia
Olivia Davis
Senior Planner

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