

**Application No:** 22/0751/FH/CON

**Location of Site:** Princes Parade Promenade  
Princes Parade  
Hythe, CT21 6EQ

**Development:** Approval of details pursuant to conditions 3 (preliminary ecological appraisal), 4 (ecological method statement), 5 (management & maintenance relating to drainage & 7 (contamination) of planning permission 21/1997/FH for storm water outfall drainage pipes

**Applicant:** Folkestone & Hythe District Council

**Agent:** Tibbalds  
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London SE1 3JB

**Officer Contact:** David Campbell

## SUMMARY

This report considers whether approval should be given for the submitted details in pursuance of condition 3 (preliminary ecological appraisal), condition 4 (ecological method statement), condition 5 (management & maintenance relating to drainage) & condition 7 (contamination) of planning permission 21/1997/FH for storm water outfall drainage pipes. The submitted documents detail how the scheme is to comply with these conditions and safeguard protected species on site. This report incorporates advice from Kent County Council's Ecological Advice Service, Flood and Water Management Service and the Local Planning Authority's (LPA) contamination consultant who have confirmed that the submitted details are acceptable and as such the application can be approved.

## RECOMMENDATION:

**That conditions approval submission be approved in accordance with the details and documents provided. That the informatives included at the end of the report be attached to the approval, and authorisation is given to the Chief Planning Officer to amend the wording of these/ include additional informatives as he feels is appropriate.**

## 1. INTRODUCTION

1.1. The application is reported to Committee because it forms part of a larger development that the Council has a substantial interest in.

## 2. SITE AND SURROUNDINGS

- 2.1 The wider Princes Parade application site is located in a prominent position on the coast, immediately to the south of the Royal Military Canal (RMC), which is a Scheduled Monument (SM) and Local Wildlife Site (LWS). Beyond the RMC to the north is the residential area of Seabrook, focussed along the A259 and to the south is Princes Parade, the sea wall, promenade and the beach.
- 2.2 The wider site is located approximately 260 metres to the south and south-east of the Kent Downs Area of Outstanding Natural Beauty, which extends as far as Cliff Road on the hillside above.
- 2.3 This specific application site consists of two locations on the southern side of the wider Princes Parade development, noted in the submission as the western and eastern outfall pipes. The pipes connect the wider site with the beach, through the existing promenade and the beach access.
- 2.4 A site location plan is attached to this report as **Appendix 1**. Figure 1 shows the site in the context of the wider development.

## 3. PROPOSAL

- 3.1 Approval is sought for details pursuant to conditions 3 (preliminary ecological appraisal), 4 (ecological method statement), 5 (management & maintenance relating to drainage & 7 (contamination) of planning permission 21/1997/FH for storm water outfall drainage pipes. While this application provides a key part of the drainage infrastructure for the wider development, the proposal was submitted as a standalone application following the approval of the outfall pipes earlier in 2022. The conditions in question read as follows:
- 3.2 **Condition 3:** Prior to commencement of the development hereby permitted, a preliminary ecological appraisal (PEA) shall be carried out, the results and recommendations of which shall inform a detailed mitigation strategy to be submitted as part of condition 4 of this planning permission.
- 3.3 The applicant has provided a letter dated 06.09.2021 from Lloyd Bore Ref: 5026-LLB-CO-Ec-0004 which has concluded that the baseline ecological data has not significantly changed. It also notes that the location of the outfall pipes did not support any different habitats or conditions than previously found. The letter concludes that given the absence of significant change, the conclusions of the original Environmental Statement remain valid.
- 3.4 **Condition 4:** Prior to commencement of the development hereby permitted, a detailed Ecological Method Statement (EMS) (informed by the submitted Ecological Mitigation and Enhancement Plan, Lloyd Bore, August 2017; Appendix 4: Scheduled of Environmental Mitigation; Appendix 5: Ecological Mitigation Strategy, Lloyd Bore REF: 3609-LLB-RP-EC-0010-S4-P04 03/07/2018; Appendix 6: Reptile report, Lloyd Bore, REF: 3609-LLB-RP-EC-0011-S4-P01; Appendix 7: Badger Report, Lloyd Bore REF 3609-LLB-RP-EC-0015 | 3609-LLB-RP-EC-0015-S4-P02\_ECOLOGY METHOD STATEMENT | PRINCES PARADE, HYTHE (FHDC) 4 STATUS: PLANNING NO. 3609-LLB-RP-EC-0012-S4-P02 03//07/2018) shall be submitted to and approved in

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writing by the Local Planning Authority. The content of the EMS shall include but not be limited to:

- a) Detailed design(s) and/or working method(s) necessary to achieve stated objectives;
- b) Timetable for implementation, demonstrating that works are aligned with the proposed phase of construction;
- c) Persons responsible for implementing the works, including times during construction when specialist ecologists need to be present on site to undertake / oversee works;
- d) Use of protective fences, exclusion barriers and warning signs;
- e) Initial aftercare and long-term maintenance (where relevant);
- f) Disposal of any waste material;
- g) Details of ongoing monitoring

The works shall be carried out in accordance with the approved details and retained as required thereafter.

- 3.5 An Ecological Method Statement from Lloyd Bore REF. NO. 5026-LLB-FP-EC-0005 P01 dated 29.04.2022 was submitted to address this condition. This concludes that the development would not harm any protective species and includes measures to ensure protected birds will be safeguarded during construction.
- 3.6 **Condition 5:** Prior to commencement of the development hereby permitted details of the implementation, maintenance and management of the scheme and how it relates to the drainage measures required for hybrid application Y17/1042/SH shall be submitted to and have been approved in writing by the Local Planning Authority. The approved details shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include: a) A timetable for its implementation; and b) A management and maintenance plan for the lifetime of the development to secure the operation of the sustainable drainage system throughout its lifetime.
- 3.7 The applicants have submitted a Flood Risk Assessment and Surface Water Drainage Strategy from Herrington Consultants Ltd dated April 2022 and an Operation and Maintenance Requirements for Surface Water Outfalls dated 14<sup>th</sup> July 2022 by BAM Construction Ltd. The reports conclude that flooding will not be increased as a result of the works and that surface water will be adequately dealt with and maintained.
- 3.8 **Condition 7:** a) Prior to commencement of the development hereby permitted a desk top study shall be undertaken and submitted to and have been approved in writing by the Local Planning Authority. The study shall include the identification of previous site uses, potential contaminants that might reasonably be expected given those uses and any other relevant information. Using this information, a diagrammatical representation (Conceptual Model) for the site of all potential contaminant sources, pathways and receptors shall also be included.
  - b) If the desk top study shows that further investigation is necessary, an investigation and risk assessment shall be undertaken by competent persons and a written report of the findings shall be submitted to and have been approved in writing by the Local Planning Authority prior to commencement of the development. It shall include an assessment of the nature and extent of any contamination on the site and whether or not it originates on the site. The report of the findings shall include:

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- i) A survey of the extent, scale and nature of contamination
- ii) An assessment of the potential risks to;
- iii) Human health
- iv) Property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
- v) Adjoining land,
- vi) Ground waters and surface waters,
- vii) Ecological systems,
- viii) Archaeological sites and ancient monuments and
- ix) An appraisal of remedial options and identification of the preferred option(s).

All work pursuant to this Condition shall be conducted in accordance with the DEFRA and Environment Agency document Model Procedures for the Management of Land Contamination (Contamination Report 11).

c) If investigation and risk assessment shows that remediation is necessary, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development. The scheme shall include details of all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works, site management procedures and a verification plan. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The approved remediation scheme shall be carried out in accordance with the approved terms including the timetable, unless otherwise previously agreed in writing by the Local Planning Authority. The Local Planning Authority shall be given two weeks written notification of commencement of the remediation scheme works.

d) Prior to commencement of development, a verification report demonstrating completion of the works set out in the approved remediation scheme and the effectiveness of the remediation shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include details of longer-term monitoring of pollutant linkages and maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority.

e) If during development, contamination not previously identified is found to be present at the site, then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted and obtained written approval from the Local Planning Authority, details of how this unsuspected contamination shall be dealt with. Following completion of measures identified in the approved remediation scheme a verification report shall be prepared and submitted to the Local Planning Authority.

3.9 To address this condition, the applicants have submitted a Land Contamination Preliminary Risk Assessment from BBHGEO Ref: LBH4635bpra dated February 2022. This document concludes that no specific mitigation is warranted as the preliminary risk assessment has not identified potentially significant contamination risks.

## 4. RELEVANT PLANNING HISTORY

4.1 The relevant planning history for the site is as follows:

21/1997/FH	Storm water outfall drainage pipes	Approved subject to conditions
Y17/1042/SH	Hybrid application accompanied by an Environmental Statement for the development of land at Princes Parade, comprising an outline application (with all matters reserved) for up to 150 residential dwellings (Use Class C3); up to 1,270sqm of commercial uses including hotel use (Use Class C1), retail uses (Use Class A1) and / or restaurant/cafe uses (Use Class A3); hard and soft landscaped open spaces, including children's' play facilities; surface parking for vehicles and bicycles; alterations to existing vehicular and pedestrian access and highway layout; site levelling and groundworks; and all necessary supporting infrastructure and services. Full application for a 2,961sqm leisure centre (Use Class D2), including associated parking; open spaces; and children's' play facility.	Approved subject to conditions

## 5. CONSULTATION RESPONSES

5.1 The consultation responses are summarised below.

### Consultees

**KCC Ecology:** No objections.

**Natural England:** No comments to make.

**Environment Agency:** No objections.

**KCC Flood and Water Management:** No objections

**Contamination Consultant:** No objections.

**Southern Water:** The Council's technical staff and relevant authority for land drainage should be consulted. No other comments to make

## Local Residents Comments

- 5.2 Local residents are not consulted as part of condition applications as they relate to technical details only.

## **6. RELEVANT PLANNING POLICY**

- 6.1 None. This application relates to the assessment and approval, or refusal, of technical details relating to the approved development at the site. It is not an application for planning permission, where regard must be had to development plan policies and other material considerations. Paragraphs 7.1 and 7.2 below set this out in greater detail.

## **7. APPRAISAL**

- 7.1 Members should be clear that this is not an application for planning permission. As such, the merits of the approved scheme are not being revisited here. This application seeks approval of technical details relating to the approved scheme and Members' decision must be based wholly on the merits or otherwise of the submitted details, having regard to the expert opinion provided in relation to these details by the Council's consultees.
- 7.2 Unless there is evidence to demonstrate that the information submitted is incorrect, or that the comments of consultees are incorrect, Members should be wary of reaching a different conclusion. Without sufficient evidence, any decision contrary to the expert advice provided by consultees is challengeable and could be the subject of an award of costs against the Council.
- 7.3 This is a standalone application, and as such the details being consider here just relate to the sites of the drainage outfall pipe and not to any other part of the wider development. In light of the above the main issues for consideration are:
- a) Conditions 3 and 4 - Ecology and biodiversity
  - b) Condition 5 - Drainage
  - c) Condition 7 - Contamination

### **a) Conditions 3 and 4 - Ecology and biodiversity**

#### *Protected Species - Reptile and Amphibian Mitigation*

- 7.4 KCC have advised that as the works are located on the beach which regularly is recharged with shingle, they are satisfied that the submitted information is likely to be valid and no updated survey is required and that priority habitats are unlikely to be present within the works area. They state that they are satisfied that a precautionary approach is appropriate to avoid impacts on any protected/notable species which may be present during the works. They have no objections to the application.

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- 7.5 Detailed advice was previously provided for condition approval application 21/1182/FH/CON which covered reptile and amphibian mitigation, bats, breeding birds, other mammals and badgers. The details of this assessment have been previously approved by the Planning & Licensing Committee and are not repeated here, however KCC Ecology are satisfied that on the basis of this information remaining unchanged, the conditions for the specified phases can be granted.
- 7.6 As such it is considered that the submitted application is acceptable in this respect and that works can proceed in accordance with these details.

## **b) Condition 5 - Drainage**

- 7.7 The original hybrid planning application as approved proposed a drainage strategy into the canal, however this strategy has now been re-visited and a strategy for draining onto the beach is now the proposal following approval of the two drainage outfall pipes onto the beach. A Sustainable Drainage System (SuDS) which sub-divides the development site into five separate drainage catchments that manage water run-off from impermeable areas before being discharged at a restricted rate to the adjacent beach was approved by planning committee in February 2022. The drainage catchments would use permeable paving to drain water run-off either into lined underground storage tanks or a 1m deep layer of lined open graded sub-base to ensure that there is no interaction between any leachates and surface water.
- 7.8 The documents previously submitted by Herrington Consulting for application 21/2380/FH/CON contain updated FRAs that contain the final drainage designs and maintenance proposals. For the current application, KCC Flood and Water Management have reviewed the documentation and advise that the information submitted is acceptable and as such they raise no objections to the application.
- 7.9 There are therefore no objections to this part of the application.

## **c) Condition 7 - Contamination**

- 7.10 In the 1930s the wider site was used for gravel extraction and in the 1960s and 1970s it was used as a refuse tip, leading to contamination and raised land levels. A contamination report has been submitted with the application.
- 7.11 The Council's Contamination Consultant has assessed the submitted details and has raised no objection to this application for the approval of details for the outfall pipes. Issues concerning contamination on the wider site will be dealt with separately. It is therefore considered that the proposals are acceptable.

## **8. CONCLUSION**

- 8.1 It is considered that the submitted details are acceptable and that the condition detail application should be approved.

## **9. BACKGROUND DOCUMENTS**

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9.1 The consultation responses set out at Section 5.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

## 10. RECOMMENDATIONS

**That approval be granted in accordance with the documents and details submitted with the application.**

### Informative(s):

1. This approval of this condition details application is given on the basis of the following information: A letter dated 06.09.2021 from Lloyd Bore Ref: 5026-LLB-CO-Ec-0004, Ecological Method Statement from Lloyd Bore REF. NO. 5026-LLB-FP-EC-0005 P01 dated 29.04.2022, Flood Risk Assessment and Surface Water Drainage Strategy from Herrington Consultants Ltd dated April 2022, Operation and Maintenance Requirements for Surface Water Outfalls dated 14<sup>th</sup> July 2022 by BAM Construction Ltd and a Land Contamination Preliminary Risk Assessment from BBHGEO Ref: LBH4635bpra dated February 2022.