

Development Management Report

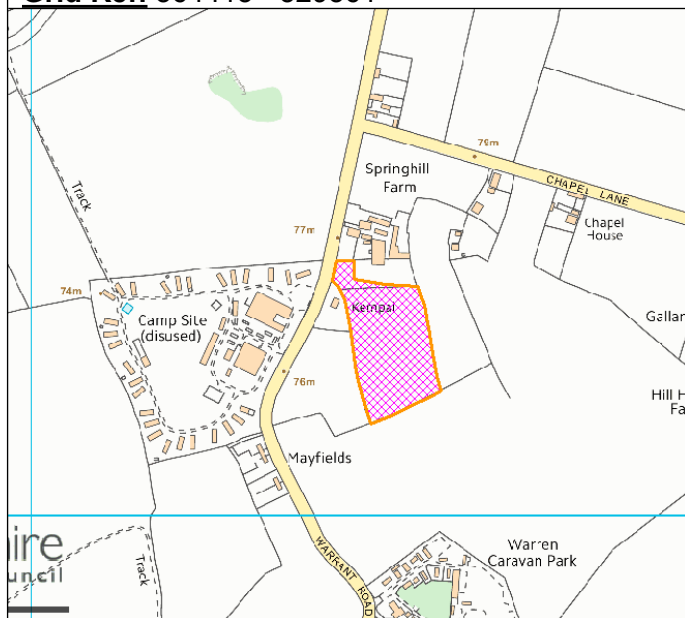
Responsible Officer: Tim Rogers

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Summary of Application

<u>Application Number:</u> 18/04131/VAR	<u>Parish:</u>	Stoke Upon Tern
<u>Proposal:</u> Variation of condition no. 8 attached to planning permission 18/00679/FUL to revise wording to read - The site shall be used for keeping game birds for no more than 17 weeks in any calendar year with associated equipment (including but not limited to feedstuffs and water containers), but excluding the pens and feeders, removed from the land between 1st August and 1st January in any one calendar year.		
<u>Site Address:</u> Springhill Farm Warrant Road Stoke Heath TF9 2JR		
<u>Applicant:</u> Mr Andrew Growcott		
<u>Case Officer:</u> Sue Collins	<u>email:</u> planningdmne@shropshire.gov.uk	

Grid Ref: 364413 - 329361



Recommendation:- Delegate to the Head of Service approval subject to the conditions as set out in appendix 1 and any amendments to these conditions as considered necessary by the Head of Service.

REPORT

1.0 THE PROPOSAL

1.1 This application seeks to vary condition 8 attached to planning permission 18/00679/FUL granted on the 20th July 2018. The permission relates to the change of use of agricultural land for the breeding of game birds.

1.2 The current wording of condition 8 is as follows:

*8. The site shall be used for keeping game birds for no more than 17 weeks in any calendar year and all structures associated with the pheasant rearing shall be removed from the land between the 1st August and the 1st January in any one calendar year.
Reason: To protect the amenity of nearby residents.*

1.3 The proposal is to amend the wording to the following:

The site shall be used for keeping game birds for no more than 17 weeks in any calendar year with associated equipment (including but not limited to feedstuffs and water containers), but excluding the pens and feeders, removed from the land between 1st August and 1st January in any one calendar year.

2.0 SITE LOCATION/DESCRIPTION

2.1 The site is located at Warrant Road, Stoke Heath and is situated to the south of Springhill Farm and to the east of Kempal. The land is otherwise surrounded by other agricultural land.

2.2 The topography of the area is relatively flat. The field boundaries are generally defined by hedgerows with mature/semi-mature trees interspersed within the landscape. Access to the site is off Warrant Road between Springhill Farm and Kempal.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

3.1 Committee consideration is required for this application as the Parish Council has raised material considerations that cannot reasonably be overcome by negotiation or the imposition of planning conditions; and the Team Manager (Planning) or Principal Planning Officer in consultation with the committee chairman or vice chairman and the Local Member agrees that the Parish/Town Council has raised material planning issues and that the application should be determined by committee. The site has planning history and the previous application was approved under delegation.

4.0 COMMUNITY REPRESENTATIONS full details of the responses can be viewed online

4.1 Consultee Comments

4.1.1 Parish Council: Objects

The Parish Council OBJECT to the Application on the grounds that the original application maintained that the site would be grazed, but this is not possible within the pens. Unless the structures are removed it will not be possible to clean the

land removing the dead birds, faeces and weed growth which would be to the detriment of the local amenity. Further, without dismantling the pens the approved layout of the site cannot be implemented as the current locations are not in accordance with the submitted and approved plan.

4.1.2 **Regulatory Services:** No objection to this variation.

4.1.3 **SUDS:** No comment

4.2 **Public Comments**

4.2.1 Five letters of representation have been received. The areas of concern relate to:

- Conditions attached to the permission have not yet been discharged and therefore this should not be permitted until the outstanding conditions have been complied with.
- There is no access for sheep to graze within the pens.

5.0 **THE MAIN ISSUES**

☐ Principle of Development

☐ Implications of Change of Condition

6.0 **OFFICER APPRAISAL**

6.1 **Policy & principle of development**

6.1.1 Under section 38(6) of the Planning and Compulsory Purchase Act 2004, all planning applications must be determined in accordance with the adopted development plan unless material considerations indicate otherwise. Since the adoption of the Councils Core Strategy the National Planning Policy Framework (NPPF) has been published and is a material consideration that needs to be given weight in the determination of planning applications. The NPPF advises that proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise. The NPPF constitutes guidance for local planning authorities as a material consideration to be given significant weight in determining applications.

6.1.2 The slight amendment to the wording of condition 8 will have no impact on the overall use of the site in restricting the period of time when the site can be used for the keeping of game birds. The change relates to the removal of the pens when not required. As such no objection is raised to the principle of the development,

6.2 **Implications of Change of Condition**

6.2.1 Concerns have been raised that this condition should not be varied until all the necessary conditions have been complied with including the position of the pens, the landscaping, fencing etc. In addition it is claimed that the sheep will not be able to properly graze the land and it will not be possible to clean the site thoroughly between the use of the site for birds, if the pens remain in place.

6.2.2 The primary function of condition 8 is to restrict the use of the land for the keeping of game birds to no more than 17 weeks between the 1st January and 1st August each year. To prevent further usage, it was the opinion of officers that the applicant be required to clear the site of all structures. However, it has been made clear by this submission that the removal of the pens is not feasible and that

sheep can graze inside the pens when not occupied by birds as was evidenced by the Case Officer during the site visit.

6.2.3 It has been requested that this application be refused on the basis that none of the conditions have yet been complied with that were attached to the original permission. There is currently an application under consideration dealing with the relevant conditions and as soon as the details are acceptable to the Local Planning Authority, the relevant decision will be issued and the works can be carried out. Until then the applicant must not start works. As the site will not be used for the housing of birds until 2019 there is time yet for the works to be carried out and the pens moved so that they comply with the planning permission.

6.2.4 In terms of the husbandry of the site, unless this impacts on the amenities of the local area, it is beyond the governance of the Local Planning Authority. Any issues with regard to the welfare of the birds is dealt with by other bodies under different legislation. With the original application allegations of this kind were made however, evidence was also provided that demonstrated the relevant authority visited the site and the issue was dealt with to their satisfaction. In terms of impact on local amenities, no objection has been raised from the Council's Regulatory Services Officer

6.2.4 Overall on balance it is considered by officers that there is no justification on which to sustain a refusal of the application to vary condition 8 of planning permission 18/00679/FUL.

7.0 CONCLUSION

7.1 It is the recommendation of Officers that the matter be delegated to the Head of Service for approval subject to conditions as outlined in appendix 1 and any amendments to these conditions as considered necessary by the Head of Service.

8.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL

8.1 Risk Management

There are two principal risks associated with this recommendation as follows:

- ☐ As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal - written representations, a hearing or inquiry.
- ☐ The decision is challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against

non-determination for application for which costs can also be awarded.

8.2 **Human Rights**

Article 8 give the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

8.3 **Equalities**

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in planning committee members' minds under section 70(2) of the Town and Country Planning Act 1970.

9.0 **FINANCIAL IMPLICATIONS**

9.1 There are likely financial implications of the decision and/or imposition of conditions if challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependant on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – in so far as they are material to the application. The weight given to this issue is a matter for the decision maker.

10. **Background**

Relevant Planning Policies

Central Government Guidance:

NPPF – National Planning Policy Framework

Core Strategy and Saved Policies:

CS5 – Countryside and Greenbelt

CS6 – Sustainable Design and Development Principle

RELEVANT PLANNING HISTORY:

PREAPP/10/02299 Possible change of use from agricultural to commercial use REC

NS/89/00889/FUL Erection of implement shed (20' x 45') GRANT 24th October 1989

13/03401/COU Change of use of agricultural land to include the breeding of game birds

GRANT 13th December 2013

14/00603/DIS Discharge of Condition 3 (Management Plan) of Planning Permission

13/03401/COU for the change of use of agricultural land to include the breeding of game birds

DISAPP 16th April 2014

17/04950/FUL Change of use of agricultural land to land for breeding of game birds WDN 10th January 2018

18/00679/FUL Change of use of agricultural land to land for breeding of game birds GRANT
20th July 2018

18/04130/DIS Discharge of Conditions 3, 4, 5, 6, 7 and 11 attached to planning permission
18/00679/FUL for Change of use of agricultural land to land for breeding of game birds
PCO

18/04131/VAR Variation of condition no. 8 attached to planning permission 18/00679/FUL to
revise wording to read - The site shall be used for keeping game birds for no more than 17
weeks in any calendar year with associated equipment (including but not limited to feedstuffs
and water containers), but excluding the pens and feeders, removed from the land between 1st
August and 1st January in any one calendar year. PDE

11. Additional Information

[View details online:](#)

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Cabinet Member (Portfolio Holder) Cllr R. Macey

Local Member

Cllr Karen Calder

Appendices APPENDIX 1 - Conditions

APPENDIX 1

Conditions

STANDARD CONDITION(S)

1. The development hereby permitted shall be begun before the expiration of three years from the 20th July 2018 being the date of the original planning permission reference 18/00679/FUL. Reason: To comply with Section 91(1) of the Town and Country Planning Act, 1990 (As amended).

2. The development shall be carried out strictly in accordance with the approved plans and drawings

Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and details.

CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

3. Within 28 days of the date of this planning permission being granted the access, internal parking and vehicle turning shall be Implemented and fully surfaced in accordance with details to be first submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure the proper surfacing of the access to the site, to prevent mud and extraneous matter being brought out onto the public highway and to prevent any flood risk.

4. a) Within 28 days of the date of this planning permission, an Integrated Pest Management Plan for Invertebrates and Mammals shall be submitted for the written approval of the Local Planning Authority. The management plan shall include a survey and identification of the nature and extent of infestation, chemical and physical control techniques, environmental management, proofing, monitoring strategy, data recording and persons or companies relevant qualifications delivering the plan.

b) The approved Integrated Pest Control Plan shall be implemented within 28 days of written approval by the LPA and adhered to during the lifetime of the development and a site folder shall be maintained at all times and made available for inspection at any reasonable time.

Reason: To safeguard the amenities of residential properties in the local area.

5. Within 28 days of the date of this planning permission full details of soft landscape works (in accordance with Shropshire Council Natural Environment Development Guidance Note 7 'Trees and Development') shall be submitted to and approved in writing by the local planning authority. The landscape works shall be carried out in full compliance with the approved plan, schedule and timescales. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall upon written notification from the local planning authority be replaced with others of species, size and number as originally approved, by the end of the first available planting season.

Reason: To ensure the provision, establishment and maintenance of a reasonable standard of landscape and to protect residential amenities of the area.

6. Within 28 days calendar months of the date of this planning permission the details of the container to be used for the storage of fallen stock shall be submitted to the Local Planning Authority for approval in writing. The approved storage container shall be provided on site at all

times when pheasants are being stocked on the site. Fallen stock shall be removed from pens within 24 hours.

Reason: to ensure that pests are not attracted to the area which could impact on the health and wellbeing of residents living in properties bordering the site.

CONDITION(S) THAT ARE RELEVANT FOR THE LIFETIME OF THE DEVELOPMENT

8. The site shall be used for keeping game birds for no more than 17 weeks in any calendar year with associated equipment (including but not limited to feedstuffs and water containers), but excluding the pens and feeders, removed from the land between 1st August and 1st January in any one calendar year.

Reason: To protect the amenity of nearby residents.

9. The total number of game birds kept at the site shall be no more than 5,500 at any one time.

Reason: To protect the amenity of nearby residents.

10. No game bird pens shall be placed within 20metres of any residential curtilage and the buffer zone shown on drawing number RM_004 Rev N received on the 8th June 2018 shall be permanently be kept clear of all structures and not used for any purpose in relation to the pheasant rearing business.

Reason: To protect the amenity of nearby residents.

11. Prior to the erection of any external lighting on the site a lighting plan shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter retained for the lifetime of the development.

Reason: To ensure protection of the residential amenities of the surrounding area.

12. Any gates provided to close the proposed access shall be set a minimum distance of 15 metres from the carriageway edge and shall be made to open inwards only.

Reason: To ensure a satisfactory form of access is provided in the interests of highway safety.