

Staffordshire Moorlands District Council
Moorlands House
Stockwell Street
Leek
Staffordshire
ST13 6HQ

Your Ref SMD/2021/0537

Our Ref CRTR-PLAN-2021-33686

Wednesday 8 September 2021

Dear Ms Curley

**Proposal: Variation of conditions 4 & 13 and Removal of Conditions 10 & 19 of Planning Permission
SMD/2014/0750**

Location: Land at Sunnyhills Road & Barnfield Road, Leek

Waterway: Leek Branch (Caldon Canal)

Thank you for your consultation.

We are the charity who look after and bring to life 2000 miles of canals & rivers. Our waterways contribute to the health and wellbeing of local communities and economies, creating attractive and connected places to live, work, volunteer and spend leisure time. These historic, natural and cultural assets form part of the strategic and local green-blue infrastructure network, linking urban and rural communities as well as habitats. By caring for our waterways and promoting their use we believe we can improve the wellbeing of our nation. The Trust is a statutory consultee in the Development Management process.

Based on the information available our substantive response (as required by the Town & Country Planning (Development Management Procedure) (England) Order 2015 (as amended)) is the following advice:

The Trust does not consider that Conditions 10 and 19 should be removed as proposed by this application

We note that this application to vary planning conditions under S73 of the Town and Country Planning Act 1990 is accompanied by a separate reserved matters application pursuant to outline planning permission SMD/2014/0750 (proposed to be determined following approval of this application). The two applications have been submitted together to seek to address the Applicant's concerns over the viability of the marina element of the approved scheme and to find a way to facilitate the implementation of the approved development without inclusion of the marina element, and to facilitate some changes to highways access arrangements.

To this end, Conditions 4 and 13 are proposed to be varied. Condition 4 lists the approved plans and therefore would require amending to reflect the revised proposal should any of the approved plans be superseded. Condition 13 relates to highways matters which do not affect the Trust.

This application also proposes the removal of Conditions 10 and 19. Condition 10 is a pre-commencement condition requiring submission of a structural review and construction methodology to the Local Planning Authority to demonstrate the feasibility and method of constructing the link from the proposed marina via the aqueduct to the Caldon Canal. Condition 19 requires submission of a detailed scheme to the Local Planning Authority for the design proposals for the marina, including the location and layout of moorings, access, materials and buildings for all ancillary features as appropriate before any work on the marina basin commences.

Canal & River Trust

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The Trust has concern over whether the approach proposed is appropriate to achieve the desired outcome. S73 applications are a mechanism to vary or remove conditions associated with a planning permission- they cannot be used to change the description of the development. Permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted.

It is therefore clear that the proposed approach set out in this application would in fact create a fresh planning permission **which includes a marina** but without Conditions 10 or 19, which require approval of the detailed arrangements for its construction or connection to the Caldon Canal, being imposed. Should the marina element then come forward at a later stage, we consider that these conditions are necessary to ensure its appropriate construction and connection to the canal. Their outright removal is not therefore appropriate.

We suggest that should the Applicant wish to have the ability to implement the current planning permission without constructing the marina, all that is required (aside from any revisions to the accompanying S106 as may be necessary) is to ensure that both Condition 10 and 11 are required to be discharged only prior to work commencing on the marina element of the development. This then allows all other elements of the permission to proceed but preserves the ability to revisit the marina element at a later stage, should funding become available. This achieves the same outcome, but without losing the ability to control necessary details relating to the provision of the marina.

We therefore consider that, in relation to Conditions 10 and 19, this application should simply seek the variation of Condition 10 so that it ceases to be a pre-commencement condition and does not need to seek any amendment to Condition 19, which is not a pre-commencement condition and does not require discharge ahead of any element of the approved development other than the marina.

Please do not hesitate to contact me with any queries you may have.

Yours sincerely,

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