

REQUEST FOR TEMPORARY EXTENSION TO APPROVED WORKING HOURS UNDER BUSINESS AND PLANNING ACT 2020

Town and Country Planning Act 1990

Town and Country Planning (Development Management Procedure) (England) Order 2010

The Business and Planning Act 2020 (BPA 2020)

Location	Proposed Residential Development Land at Foldgate Lane, Ludlow Shropshire
Application to which extended working request applies	Discharge of Conditions 17, 18, 19 & 20 relating to planning permission - APP/L3245/W/15/3137161 - Outline application (access for approval) for mixed residential development comprising 137 dwellings; demolition of existing agricultural buildings; creation of vehicular access from the A49 Ludlow Bypass
Application reference	14/04608/OUT (approved on appeal)
Date extended working request received	28 th July 2020
Applicant	Crest Nicholson Midlands

Under Shropshire Council's scheme of Delegated Powers I hereby inform you that the request in the email from Crest Nicholson dated 28th July 2020 to temporarily extend the construction working hours defined in outline planning permission reference 14/04608/OUT (approved on appeal) is hereby **APPROVED** subject to details and protocol for extended working listed below.

DETAILS OF TEMPORARY CONSTRUCTION WORKING HOURS EXTENSION

Condition 12 of outline permission 14/04608/OUT is hereby temporarily varied to allow extended afternoon / evening working to 7.30pm on weekdays and 5pm on Saturdays subject to the following stipulations which have been agreed with the developer, Crest Nicholson:

PROTOCOL FOR EXTENDED WORKING

Extended working shall not take place other than in accordance with the following provisions which have been agreed between the Local Planning Authority and the developer Crest Nicholson:

1. Working to 7.30pm on Monday to Friday and 5pm on Saturdays during August only in the first instance;
2. Crest shall seek prior written approval of the Local Planning Authority for extension in subsequent months (one week notice of continued extended working shall be given. The Authority shall respond within 2 working days or consent shall be deemed to be given);
3. Crest shall seek to arrange the extended working operations such that any noisier activities including drilling / cutting / grinding and skip cleaning / emptying, scaffold erection are carried out during normal working hours wherever possible;
4. Activities during extended working shall be separated wherever possible by at least 50m from the nearest residential properties and should occur preferentially in areas where separation to residential property can be maximised;
5. No artificial external lighting shall be employed unless details have been first approved by the Authority;
6. In the event that the Planning Authority receives complaints attributable to the extended working Agreement which are subsequently validated by the Authority then upon notification to this effect by the Authority Crest will carry out a review of the complaint and will submit mitigation proposals and timescales where appropriate to the Authority which shall be implemented in accordance with the approved details.

Dated 28th June 2019



**Grahame French
Principal Planner**

Notes:

Regulatory context of request by Crest Nicholson to extend construction working hours

The Business and Planning Act 2020 (BPA 2020) received Royal Assent on 22nd July 2020. Section 16 of the BPA 2020 inserts new sections 74B (conditions relating to construction working hours), 74C (effect of application under section 74B) and 74D (sections 74B and 74C: supplementary) into the Town and Country Planning Act 1990. Section 16 came into force on 28 July 2020.

Section 74B introduces a new temporary fast track deemed consent route for developers to apply to a Local Planning Authority ('LPA') to vary existing conditions, or the details submitted under a condition, that limit site working hours. This deemed consent route does not apply to mining operations or householder development.

Applicants are encouraged to provide details of mitigation plans setting out how they propose to liaise with neighbours and manage and mitigate any effects on local residents or businesses.

The LPA has 14 calendar days to consider such applications. If an application is approved, this will temporarily amend planning restrictions on construction working hours until 1st April 2021, unless either another earlier date has been requested by the applicant or is decided upon by the LPA, with the agreement of the applicant.

Unless there are very compelling reasons, an LPA should not refuse an application to extend working hours until 9pm, Monday to Saturday. In some cases, 24-hour working may be justified.

If the LPA does not determine the application within 14 days, the revised working hours are deemed to have been consented to.

Careful consideration needs to be given to development which affects a habitats site or is EIA development.

There is a right of appeal under new section 78(1) (ab) of the TCPA 1990.

The government has published guidance which sets out further details and the considerations which LPAs must take into account when determining applications under this new route. The government guidance: 'modification of planning conditions relating to construction working hours' sets out how this process is to work:

<https://www.gov.uk/government/publications/construction-working-hours-draft-guidance/draft-guidance-construction-site-hours-deemed-consent>

Local Planning Authorities must have regard to this guidance when determining an application under this new route. Reasonable and proportionate changes to construction hours should be accepted where they support safe construction working in line with social distancing guidance and enable construction sites to operate, unless there are other compelling reasons against the change. In deciding this, local planning authorities should consider:

- any justification provided which sets out the need for proposed extended working hours as a result of social distancing;*
- any mitigating measures to be put in place to avoid significant impacts on businesses and the health and quality of life of those people in the near vicinity;*
- the original reasons for any existing limits on construction working hours, including whether limitations were relied upon as either mitigation measures or as the basis of assessment for either an Environmental Impact Assessment (EIA, including screening) or a Habitats Regulation Assessment;*
- the extent of additional working, compared to current permitted hours, and degree to which this variation is expected to result in local impacts that cannot be mitigated.*

Careful consideration will need to be given to applications which are:

- made in relation to sites in proximity to businesses or community uses which are particularly sensitive to noise, dust and vibration – and particularly so where such uses are seeking to recover from the impacts of coronavirus, and extended working hours could have a negative impact. Examples include hospitals, hospices, care homes, places of worship, broadcasting or recording studios, theatres and cinemas*
- made in relation to sites in close proximity to residential areas where the request for changing hours is likely to have a significant impact on health, taking into account the Noise Policy Statement for England, the requirements of section 79 of Environmental Protection Act 1990 and the duty on local authorities to protect persons in the locality from the effects of noise under section 60(4)(d) Control of Pollution Act 1974*
- made in relation to EIA development or development which was subject to EIA screening, and where limitations were put in place to restrict the hours of construction to*

reduce significant impacts on health to a level which was acceptable, or to reduce impacts on quality of life, or where these restrictions formed the parameters of development against which harm was previously assessed (see question below)

- made in relation to development which was subject to a Habitats Regulations Assessment and either screened out as not likely to have a significant effect on a habitats site, or subject to appropriate assessment and mitigation measures were put in in order to ensure that the development would not have an adverse effect on the integrity of a habitats site. (see question below)*
- for development adjacent to Sites of Special Scientific Interest, conservation interest and other environmental interest where extended hours are likely to have a significant environmental effect and where mitigation measures were put in place to restrict the hours of construction.*

Details of request to extend working hours

On 10th November 2016 outline planning consent was granted on appeal by the Secretary of State for a residential development on land at Foldgate Lane, Ludlow (planning application reference 14/04608/OUT). Condition 12 of the outline permission is worded as follows:

Construction hours

12) With the exception of work to provide access onto or from the A49, construction works shall not take place outside of the following times:

- i) Monday to Friday 07:30 to 18:00;*
- ii) Saturday 08:00 to 13:00, and;*
- iii) Not at any times on Sundays, Public or Bank Holidays.*

On 28th July 2020 the LPA received a request from the site developer Crest Nicholson ('Crest') to extend working hours at the Foldgate Lane site under Section 74B of the Business and Planning Act 2020. Initially the request was to extend working to 9pm on Monday to Saturday.

Consideration of extended working request by the Local Planning Authority

Having considered the proposals and the context of the construction site at Foldgate Lane the LPA responded to Crest that a proposals for extended working to 9pm would be likely in this instance require express planning consent.

Crest responded that a lesser extension to 7.30pm on weekdays and 5pm on Saturdays would be accepted by the company. Following consultation with the Council's Regulatory Services section the LPA responded with a request to include some additional amenity safeguard provisions as detailed on the front page of this certificate. These were accepted by Crest.

Conclusion

Section 74 of The Business and Planning Act 2020 and the associated written ministerial statement make it clear that there is a presumption that LPA's will accept requests for extended working unless very exceptional circumstances apply. This is in order to assist the house building industry in recovering from the effects of the current health emergency.

The LPA has worked constructively with Crest in the context of this statute in order to agree an extended working scheme which includes appropriate safeguards. This is in recognition of the sensitivities of residential properties in the vicinity of the site, including the Greenacres estate, Foldgate Farm and Hagley House residential care home.

The provisions which have been agreed with Crest will allow the LPA to review the extended working operations and to require appropriate mitigation, if necessary in the event that complaints are received and subsequently validated by the LPA.

It is considered that the provisions agreed with Crest achieve an acceptable balance between the need to protect residential amenity and the requirements of Section 74 of The Business and Planning Act 2020 to provide greater flexibility in construction hours during the current health emergency.