

South Gloucestershire Council  
Department for Place  
Planning  
Badminton Road  
Yate  
Bristol BS37 5AF

Our ref: PR2284

18 January 2024

SUBMITTED VIA PORTAL

Dear Sir/Madam,

**S73 APPLICATION FOR REMOVAL OF CONDITIONS 2 & 11 ON PLANNING APPROVAL  
P19/16524/F**

**LAND AT LYDE GREEN EMERSONS GREEN BRISTOL SOUTH GLOUCESTERSHIRE BS16 7NT**

This application is submitted on behalf of NORFT Ltd under Section 73 of the Town and Country Planning Act 1990 to remove Conditions 2 and 11 on planning approval reference P19/16524/F.

The application is supported by this cover letter; a letter dated 5 October 2016 from Cath Clements, Highway Records and Searches, South Gloucestershire Council; and copies of email correspondence with Cath Clements and Andrew Griffiths (Legal, South Gloucestershire Council).

**BACKGROUND**

Planning consent was granted on 07/06/23 under application reference P19/16524/F for the following works:

*“Construction of a 7m access road into the Lyde Green development site with associated changes in the priority of Lyde Green Board. The widening of Lyde Green Road north to Road 5 to 7m and installation of a 3m multi-user path, with provision of street lighting and planting. Re-surfacing of existing public right of way.”*

The application was submitted to provide an alternative access to the Lyde Green Farm allocated development site as a solution to the deficient access arrangements associated with the current outline planning application by Edward Ware Homes for a housing development (ref. P19/1275/F).

The NORFT approval was subject to multiple conditions.

**Condition 2** prevents the commencement of the approved development until three scenarios apply. It states:

*The development hereby approved shall not commence until such a time that:*

- a) Planning permission has been granted for residential development on the land at Lyde Green Farm, as identified in the site location plan submitted with application P19/1275/F;*
- b) That permission has been implemented; and*
- c) The owners of both sites have agreed terms that the access permitted under this application (P19/16524/F) will be used to serve the new residential development at Lyde Green Farm.*

Reason

*To ensure that the development is constructed to serve its intended purpose of providing improved connectivity between the proposed Lyde Green Farm residential site and existing residential areas to the west for pedestrians, cyclists and horse riders, to accord with Policies CS8 and CS29 of the South Gloucestershire Local Plan; Core Strategy (Adopted) December 2013 and Policies PSP10, PSP11 and PSP47 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan (Adopted) November 2017.*

*The condition is required as a Grampian condition (pre-commencement) to ensure that construction works are not undertaken until it is guaranteed that the proposed access improvements are needed to serve their intended purpose; and would therefore deliver the benefits identified.*

**Condition 11** prevents the commencement of development until the agreed area of Common Land has been replaced, consistent with drawing IMA-19-167 020D, and registered as common land in accordance with an order under s17 of the Commons Act 2006.

## **CONDITION DEFICIENCIES**

### Condition 2

As identified above, the NORFT access proposal was submitted to provide an implementable, safe and fully standards compliant solution to the access deficiencies identified by your transport officers associated with the access proposals for the Edward Ware Homes outline planning application for the housing development of the allocated Lyde Green Farm site, and it is pertinent that transport officers have maintained their objection to the outline application in their consultation response dated 09/05/23 to the re-determination of the application.

The access proposals for the outline application rely on land outside the applicant and landowners' control and is therefore incapable of being implemented. This was confirmed through the quashing of the planning approval by the High Court in March 2021 and, in the absence of any changes to the access proposals, the application is at risk of a further legal challenge should permission be granted for a second time.

It is understood that the NORFT permission is the only option available to deliver an acceptable access into the allocated land, due to land adjacent to Lyde Green Road and the bellmouth

junction to Lyde Green Farm being Common land in private ownership (NORFT Ltd), rather than under the control of the Local Highway Authority.

It is considered that Condition 2 is unlawful and *fails the tests of reasonableness and enforceability* because it relies on the actions of third parties. NORFT has no control over the submission and approval of a residential permission at Lyde Green Farm or its implementation – Condition 2(a) and (b) – and alarmingly, the applicant's Progress Report<sup>1</sup> on Companies House estimates that permission is unlikely to be granted until Q4 in 2024 with receipts from the capital sale of the site estimated in Q2 of 2025. Delivery would therefore be delayed until 2026 at least, and the NORFT permission would have expired by then. NORFT's attempts to discuss the land ownership issues and solution with Edward Ware Homes have, to-date, been unsuccessful, so the requirement on NORFT to agree terms with the developer of Lyde Green Farm in relation to the use of NORFT access to serve the residential development (criterion c) is unreasonable.

The Lyde Green Farm site benefits from an existing allocation for development, which is one of the last parcels of safeguarded land at Emersons Green East, and its development for housing forms part of the district's housing figures for the current plan period. It is, furthermore, understood that the site allocation and its delivery has been relied upon in defending appeals. The quashed decision confirms that the site is effectively 'land locked' and therefore the development of the Lyde Green Farm site can only come forward with the NORFT access proposal.

The width of Lyde Green Road and the current arrangement of the bellmouth junction are currently substandard, and would be incapable of safely accommodating the volume and type of construction traffic associated with the residential development of the site. It is inevitable that there would be conflicts with existing road users, the Avon Cycleway and the long-distance public footpath, to the detriment of highway safety. The widening of Lyde Green Road together with the proposed new vehicular access into Lyde Green Farm would provide a safe and acceptable access route for construction traffic and it is considered therefore that the NORFT permission should be implemented and ready for use prior to any planning permission being granted for the development site.

Even if the Council considers that the current highway and access arrangements could accommodate the construction traffic associated with the residential development of Lyde Green Farm, the current requirement for NORFT (as owner of the land covered by permission ref. P19/16524/F) and the owners of Lyde Green Farm to agree terms before the NORFT access is implemented would result in significant delays in the implementation of any subsequent residential permission.

Notwithstanding the fact that Condition 2 is unlawful for the reasons identified above, there is a very clear strategic benefit associated with the implementation of the NORFT permission in advance of a permission for Lyde Green Farm. The implementation of NORFT's new bellmouth access in particular would unlock the allocated site, enabling it be developed with an existing policy compliant and safe access already in place.

Given the importance of the Lyde Green Farm site to the Council's housing figures within the context of an out-of-date development plan and settlement boundaries, which expose the Council to speculative proposals for housing in less desirable locations, surely the implementation

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<sup>1</sup> This can be supplied to the Council upon request – it is a public document on Companies House

of necessary highway infrastructure to accommodate the development and timely delivery of an allocated site should be regarded as a priority?

We would therefore urge the Council to reconsider its position on Condition 2. Ideally, the condition would be removed, but if the Council considers some control over the implementation of the NORFT permission is needed, we would be willing to accept amendments to the condition to secure phasing, but this cannot be (i) tied in any way to the implementation of a permission at Lyde Green Farm, which is not under NORFT's control, or (ii) subject to any requirement to agree terms with a third party.

### Condition 11

NORFT has previously provided evidence to the Council's Asset Management Team<sup>2</sup> and subsequently to the Legal Department<sup>3</sup> that the proposal would not result in the development and loss of Common Land, based on historic records, and therefore there should be no requirement to make alternative provision.

The registration of Common Land requires a formal application to the Secretary of State and is a lengthy and costly process, which could be open to challenge. Whilst NORFT is still willing to provide additional Common Land, records demonstrate that this is not necessary, relevant to the development permitted, or reasonable (bearing in mind no loss would arise), and consequently Condition 11 fails the tests for a condition and should be removed from the permission.

### **PROPOSED AMENDMENTS**

This application seeks the following amendments to the existing permission:

- 1) The removal of Condition 2 so that the permission can be implemented in advance of any planning consent being approved or implemented for Lyde Green Farm, and to remove the requirement for terms to be agreed with a third-party land-owner; and
- 2) The removal of Condition 11.

As identified above, should the Council consider that some control over the implementation of the NORFT permission is necessary, and so the condition cannot be removed in entirety, we would welcome discussions with the Council to ensure that any amendments to the condition are lawful.

Yours faithfully,

*RMorgan*

**Rebecca Morgan BA (HONS) MTP MRTPI**  
**Director**  
**Stokes Morgan Planning Ltd**  
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<sup>2</sup> Email to Catherine Clemence, Highway Records and Searches Officer, dated 1<sup>st</sup> March 2023

<sup>3</sup> See the email communications with Andrew Griffiths between 27 October 2023 and 20 December 2023