

Fulford Parish Council
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By e-mail to: michael.slater@york.gov.uk

Mr M Slater
City of York Council
West Offices
Station Rise
YORK YO1 6GA

14th June 2016

Dear Mr Slater,

Fulford Parish Council is writing to you with regard to work currently being undertaken at Germany Beck to construct a site compound. This compound is to remain in situ for the duration of the works to construct the access road and the flood storage ponds.

We consider that Persimmon is breaching several conditions by undertaking work in this area and we ask you to address our serious concerns set out below and to consider placing an immediate 'Stop Notice' on the work or taking other enforcement action.

Although members of the parish council spoke to the site manager before work commenced yesterday and outlined some of the existing constraints in this area, work is progressing regardless.

1. Contaminated land

The compound is located on the site of a former rubbish tip, which is due to be covered in a layer of clean topsoil to prevent users coming into contact with contaminated land. This remedial work was supposed to have been completed prior to any works commencing onsite as stipulated by Condition 19:

'A site investigation shall be undertaken in accordance with BS10175: investigation of potentially contaminated land: code of practice. The results of the investigation shall be submitted to and approved by the local planning authority in writing prior to any development commencing on site.

A risk based remedial strategy shall be developed based on the findings of the site investigation. The remedial strategy shall be submitted to and approved by the local planning authority in writing. The approved strategy shall be fully implemented prior to any development commencing on site.....'

The Council has approved a remedial strategy (AOD/14/00120), which consists of placing a 300mm layer of clean soil over the area of the former tip, but Persimmon has failed to implement it, in clear breach of the condition. A large and deep area of topsoil has now been scraped away that has exposed the contents of the tip which are visible on the surface, including broken glass, bottles, ceramics, bricks and metal. These materials are also visible in the large mounds of removed earth, which is being stored nearby.

This gives rise to health and safety issues as well as the risk of pollution leaching into Germany Beck during flood events or heavy rainfall. A further consequence is that it will no longer be possible to undertake the scheduled remediation until after the road construction is completed and the compound is removed. The area involved is not earmarked for any built development and will remain as public open space, so there is therefore no justification for deciding to site a compound in this location and thus delaying the remedial measures.

Furthermore, we draw your attention to the bat mitigation and tree protection measures required under the terms of conditions (see points 2 and 3 below).

2. Bat Mitigation

Condition 9 (reserved matters) sets out a detailed schedule of landscape and other proposals to protect the remaining bat habitat and to compensate for the loss of habitat removed during 2014. In addition it requires the early establishment of willow thickets and trees to create a sheltered route for bats in the adjacent roosts to fly across the access road at the proposed hop-over points. This compensatory planting should be well advanced by the time the new road comes into use but a large proportion of this planting is shown to be located where the site compound is now being installed (see Figure 4 of the Mitigation Strategy). The planting will thus be delayed until construction of the road is complete, in breach of the details set out in the *ERAP Bat Mitigation Strategy and Method Statement* that was approved by the Council last year (Ref: AOD/14/00417). [We attach this report for information]

3. Tree protection

Condition 5 requires protective fencing to be placed around all retained trees in advance of any particular phase of development and includes the following protective measures:

- i. A chestnut paling or similar fence shall be erected at a distance of not less than 4.5 metres from the trunk of any tree and 2 metres from any hedge;
- ii. No construction activity (including the erection of site huts) shall take place within the crown spread of the trees or within the fenced areas around the hedges;

This condition has been breached because no such fencing has yet been erected around trees or hedges adjacent to the compound area, or anywhere else. The temporary access has been routed under the canopy of a mature Ash (T33) and damage to this tree is already evident. Furthermore, there is a large dead Eucalyptus tree on the west boundary of the compound (T30). Although the 2011 tree survey recommended felling of this tree on safety grounds, it was subsequently identified as a Category 1 tree in terms of its suitability for bat roosts and the documentation sets out that this tree will in fact be retained and fully protected. In view of the close proximity to this tree and the bat roosts at the care home, it is especially concerning that the developer is flouting even basic requirements to protect trees and habitat of importance to protected species.

4. Himalayan Balsam

The site of the access road and junction is contaminated with Himalayan Balsam over almost the whole area. As part of Condition 10 (Nature Park), this invasive weed is required to be removed before work commences on site as set out in the *Invasive Weed Method Statement* (Appendix B to the Landscape Management Specification). However, this has not so far taken place and the site remains contaminated both with

two year's growth visible both on the ground and in the huge mounds of soil currently being stored on the site.

5. Flood zones

The area of the compound is located entirely in flood zone 3 and a map (provided by the Environment Agency) indicates that much of the area was flooded in Dec 2015. It cannot be acceptable to site a compound in such an area, presumably with generators and toilet facilities as well as offices and parking provision. [A scan of the 2015 EA flood map is provided with this letter plus MET Engineers' plan of the 1:100 year flood contour plus climate change]

6. Storage of materials within flood zones.

Condition 26 is explicit and states:

'There shall be no storage of any materials, including soil, within that part of the site below the 9.81 m AOD contour, which is liable to flood'.

Persimmon has been breaching this condition for many months by storing soil and other materials in the floodplain, including soil contaminated with Himalayan Balsam. The Council should now ensure full compliance with the condition by requiring the removal of all currently stored materials to a suitably licenced area and prohibiting the storage of such materials in the future.

We would very much appreciate your urgent response to these breaches of planning control and you will note that we have copied this letter to other interested parties.

Thank you for your consideration of this matter.

Yours sincerely

Rachel Robinson

Clerk and RFO to Fulford Parish Council