

**PLANNING STATEMENT IN
VARIATION OF A CONDITION
PERTAINING TO 18/00489**

AT

**19B FROGMORE LANE,
WATERLOOVILLE PO8 9QN**

MLP REF: FL/19/188

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1.0 Introduction

- 1.1. This statement sets out relevant planning policies and the application of those policies. In so doing, the following conclusions are reached:

- The subject building performs a use which is incidental to the enjoyment of the dwellinghouse as such. Permission was required by reason of, inter alia, the removal of Part 1 Class E permitted development rights.
- The building and its incidental use is acceptable on its merits and the limiting condition has been imposed to safeguard residential amenity. This is a reasonable approach in response to concerns expressed by some neighbouring residents.
- In seeking a variation we have regard to national planning policy as well as the reasonable needs of neighbours and the safeguarding of their amenity. This is set out in relevant development plan policy as well as the consideration of the proposal.
- The proposed use has been carefully framed having regard to these material planning considerations.

- 1.2 On the basis of the foregoing, the proposed use is appropriate and it should be granted a fresh permission along with the varied planning condition.

2.0 Relevant planning history & land use

- 2.1. Planning permission was granted in July 2018 for the retention of the curtilage building. 18/00489 refers and was subject to a limiting condition which reads:

"The outbuilding hereby permitted shall be occupied solely for purposes incidental to the occupation and enjoyment of the existing dwelling and shall not be used for any business, commercial or industrial purposes whatsoever or as a separate unit of accommodation, without the prior written approval of the Local Planning Authority."

The reason for the condition is:

Reason: In the interests of the amenities of the occupiers of nearby properties and having due regard to policies CS16 and DM13 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework."

3.0 **Planning policy**

3.1. The application site lies within the developed area and policies CS16 and DM13 of the adopted Local Plan and Core Strategy are relevant. These policies seek to safeguard amenity in regard to smell, noise, privacy and outlook.

3.1. National policy as set out in the 2019 Framework sets out the presumption in favour of sustainable development (paragraphs 7-13) and the use of planning conditions (55) which states:

55. Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification²³.

3.2. Practice Guidance variously refers to the 6 tests and the use of planning conditions. The key aspects are as follows:

- *Planning conditions should only be imposed where they are: necessary;*
- *relevant to planning and; to the development to be permitted;*
- *enforceable;*
- *precise and;*
- *reasonable in all other respects*

The 6 tests must all be satisfied each time a decision to grant planning permission subject to conditions is made.

Clear and precise reasons must be given by the local planning authority for the imposition of every condition.

3.3. The following sections set out the applicant's response to these planning policies.

4.0. **Applying planning policy**

4.1. In considering the relevant planning policies and the application of these policies, we refer to the following:

1. Is the proposed development acceptable in principle?
2. Is the subject condition reasonable and necessary?
3. Is the particular use and proposed variation appropriate in this location?
4. Are there any other material planning considerations?

The principle of development

4.2. It is clear that the Borough Council and national planning policy have a positive approach to working from home and the use of IT to enable this.

- 4.3. In this case the current use of the building as a gymnasium, music and relaxation facility and for domestic storage purposes fall within the limitations of the permission and legislation. Moreover these uses fall within the remit of the limiting condition on the 2018 permission.
- 4.4. Notwithstanding this condition, working from home is acceptable as an incidental activity although this is a matter of fact and degree. As such the applicant's could ordinarily make use of the subject to building as an office, dance or Pilates exercise studio without the need for planning permission and this would include guests as well as perhaps a single paying participant. None of this would constitute development as described by s.55.

Is the condition reasonable and necessary?

- 4.5. National policy requires that planning conditions must satisfy all of the 6 tests. Plainly the condition is enforceable; is related to the development; and is precise. However, the condition is unnecessary in so far as any "business, commercial or industrial process" would require planning permission.
- 4.6. From papers made available on the local authority web site it is probable that the condition was imposed as a result of neighbour concerns that the building was proposed to be a gymnasium or other commercial use. As was confirmed by the applicant this was never the intention.
- 4.7. The matter of reasonableness is perhaps a result of the incidence of objection and the local authority seeking to address these concerns. Indeed this is reflected in the reason for the condition and the related policies which are detailed therein.

The proposed variation and appraisal

- 4.8. It is proposed to alter the wording as follows:

The outbuilding granted under reference 18/00489 shall be occupied for purposes which are incidental to the enjoyment of the dwellinghouse as such and as a Pilates studio for no more than 3 persons and not outside of the following times:

Monday-Friday 09.00-12.00 and 17.00-20.00

Saturdays 0900-16.00

Sundays 10.00-16.00

- 4.9. It should be noted that the applicant has considerably moderated her aspirations in light of the pre-application response and on advice. It is a balance which is aimed at safeguarding the amenity of neighbours.

- 4.10. It is also proposed that in order to safeguard amenities of the adjoining residents the following conditions should be imposed on the fresh planning permission:

Prior to the commencement of the Pilates use hereby approved the windows and doors shall be fitted with blinds and these shall remain closed during the operation of Pilates classes. Any music should not be audible outside of the building.

The doors and windows to the building shall remain closed at all times during the operation of the Pilates classes

- 4.11. In setting out these matters out it is important to understand the nature of the proposed use. It is described by the NHS as:

Pilates is a form of exercise that focuses on balance, posture, strength and flexibility. It's suitable for people of all ages and fitness levels.

- 4.12. Those being instructed will be led by the applicant and would often comprise a single person. Classes would be of around 30-40 minutes and would be accompanied by background music which needs to be retained at a level which allows the instructor to be heard. We have witnessed this and higher noise levels from outside of the building and it is sufficiently well insulated such that there is no audible sound in the garden area. It is suggested that the appointed case Officer undertakes a site viewing to observe this.

- 4.13. Plainly a degree of exercise will involve the generation of latent heat and the studio is fitted with a standalone air conditioning tower which provides the necessary comfort. This is not audible outside of the building.

- 4.14. In terms of parking, the site plan shows that there is sufficient space to accommodate visitor parking for the duration of the classes and this addresses the relevant development management matter of traffic and off street parking.

- 4.15. Participants would come along the side of the house and enter the building for the duration of the class. They would then leave and return to their car. There is no reception area and repeat visitors would appreciate the process. Whilst they could see over the fence into the adjoining property this is not likely to be any different from householders and would involve a fleeting walk past.

- 4.16. On the balance of these matters there would be no undue disturbance at the indicated times and no prima face conflict with relevant planning policy.

Other material planning considerations

- 4.17. Regard should be had to the nature of the use as set against the current scope of uses which includes incidental uses such as music, computer gaming and gymnasium use. These need to be balanced against the controlled use which is suggested by way of the variation of the subject planning condition. In essence the fall back position is one which does generate a degree of domestic activity involving some noise. Indeed there may be occasions where this is readily discernible by neighbours.
- 4.18. Provided the proposed low key Pilates use is controlled in the manner described then it is sufficiently low key to reflect the current level of activity.
- 4.19. There are no other material planning considerations which merit discussion and the proposed variation is acceptable on its merits.

5.0 Summary - the planning balance

- 5.1. By way of summary, the following matters are set out:

- The subject building was granted permission in 2018 and has performed a function which is incidental to the enjoyment of the dwellinghouse as such. This includes music, gymnasium use and the range of domestic activities associated with a curtilage building.
- It is questionable whether the limiting condition is necessary and appears to be a response to neighbour representations during the course of the 2018 planning application. This aside, the applicant respects the matter of residential amenity and this has to be set against the nature of the existing and proposed uses.
- In seeking a variation of the condition and addition of two others, the applicant has regard to the reasonable amenity of the neighbours and proposes practical solutions to safeguard the same. This is part and parcel of relevant development plan policy as well as the encouragement of working from home.
- The planning balance must have regard to all of these material considerations as set against the current use; as well as the fall back position where working from home on this basis would not ordinarily require permission. Once classes have ceased the building will return

to ordinary domestic use as is currently the case. This is unfettered in terms of noise, light and the usual coming and goings of domestic life.

- 5.2. On the basis of the foregoing, the use represents sustainable development which is wholly compliant with prevailing national and local planning policies. As such, planning permission should be granted in the manner proposed.