



TOWN & COUNTRY PLANNING ACT 1990

APPEAL BY: MR EDNEY

LOCATION: Land to the rear of 35 Blackthorn Drive, Hayling Island, Hampshire, PO11 9PA

PROPOSAL: Variation of Condition 7 of Planning Permission APP/18/01276 (Erection of 1No.1bed detached bungalow with associated parking and access. New parking layout for 35 Blackthorn Drive) to allow the development to be constructed in accordance with the schedule of materials submitted; and removal of Condition 10 of Planning Permission APP/18/01276 which relates to withdrawal of permitted development rights.

COUNCIL REF: APP/19/01235

STATEMENT OF CASE

1.0 Introduction

- 1.1 This appeal is made in respect of the local planning authority's decision to refuse to remove condition 10 of planning permission APP/18/01276 which seeks to remove permitted development entitlement for the site and to allow the variation of condition 7 by proxy for the revised materials schedule.
- 1.2 It is considered that the removal of permitted development entitlement enforced through condition 10 fails to meet the six tests detailed in paragraph 55 of the NPPF, as well as the supporting conditions guidance provided by the National Planning Practice Guidance (NPPG) and as such is unnecessary and unreasonable by its very nature.
- 1.3 It is contended that the LPA should have not only had regard to the conditions tests provided in paragraph 55 of the NPPF but also the additional guidance provided within

the NPPG, as well as the previously approved permission (APP/15/01365) for the same development, assessed under the same local plan policies, which did not remove permitted development entitlement (see Appendices 1 and 2). It is for this reason that the appeal is lodged as the LPA has failed to determine the same development consistently and has failed to properly consider and apply the conditions tests.

1.4 Background

This appeal follows a previously approved permission for the same development, assessed under the same local plan policy framework. The previous permission having lapsed.

- 1.5 It was right that planning permission should be granted again but the decision to remove permitted development entitlement without any sound or reasoned basis was considered to be both unreasonable and unacceptable. It shows an inconsistency in the decision-making process without any notable policy or material planning change to justify it. Appendices 1 and 2 provide the previous decision notice and the previously approved scheme, showing that there has been no change in policy, or the development proposed.

2.0 Conditions being challenged and reasons why

2.1 Condition 7

It was sought to amend condition 7 to allow for an updated materials schedule for the dwelling. The LPA were agreeable to this aspect of the proposal, but the application has been refused on the unwillingness to accept that condition 10 should not have been imposed. It is anticipated that the Inspector will accept the LPAs position with regard to condition 7 and allow it to be amended to enable the development to be built in accordance with the schedule of materials submitted.

2.2 Condition 10

Notwithstanding the provisions of any Town and Country Planning General Permitted Development Order, no extension, building, structure or roof alteration permitted by Part 1, Classes A, B, C or E of the 2015 Order, as amended, shall be erected within the curtilage of the site without the prior written approval of the Local Planning Authority.

Reason: To avoid an overdevelopment of the site in the interests of the character of the area and amenities of the occupiers of nearby properties and having due regard to policy CS16 and DM13 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2018.

2.3 Condition 10 Reason for Challenge:

Planning Practice Guidance states that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. The PPG states that a condition must not be imposed unless there is a definite planning reason for it i.e. it is needed to make the development acceptable in planning terms.

- 2.4 The PPG continues: *“Conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#), so that it is clear exactly which rights have been limited or withdrawn. Area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. The local planning authority also has powers under [article 4 of the Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#) to enable them to withdraw permitted development rights across a defined area, where justified.”*
Paragraph: 017 Reference ID: 21a-017-20190723

- 2.5 It is contended that no exceptional circumstances exist to warrant a clear blanket ban on all householder permitted development for this site. The Council’s reason to avoid an overdevelopment of the site in the interests of the character of the area and amenities of the occupiers of nearby properties is extremely ambiguous with no identifiable reason for concern.

- 2.6 **Overdevelopment of the site** – the GPDO provides clear requirements to ensure that this does not occur, including, but not limited to 50% of the curtilage must not be developed.

- 2.7 **Character of the area** – it is unclear how permitted development entitlement would harm the character and appearance of the area. The site is not located within a

statutory designated area and would be no different to any other residential property being able to take advantage of the same provision.

2.8 **Residential amenity** – Again this is very ambiguous, which neighbours, how and why? If this was a real concern this should have been specific and clearly detailed as to what amenities were being protected.

2.9 Having regard to the previous approval and the fact that no such condition was imposed demonstrates that the new case officer has included the condition with little thought or reasoning and has failed to accept this point through the application to remove this defective condition.

2.10 In this case there was no discussion or negotiation regarding the imposition of conditions and there has been little or no regard to the previous planning site history or the conditions tests. Had the LPA done so the conclusions reached by the previous planning decision and the conditions imposed would have had some bearing on the conditions now imposed by the LPA.

2.11 It is important that the LPA are accountable for their decisions and the conditions they impose. Planning decisions and conditions have far reaching implications and fosters an otherwise unacceptable practice with little thought or regard as to why conditions are being imposed and whether they are in fact truly necessary or reasonable. Each condition must therefore clearly be considered and assessed against the conditions tests before it is imposed. Unfortunately, this has not happened in this case and has bought about the appeal challenge and subsequent costs application.

3.0 Policy Support for the Appeal

3.1 National Planning Policy Framework (NPPF 2019)

“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 justification” (Paragraph 55, NPPF).

3.2 National Planning Practice Guidance (NPPG)

“When used properly, conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects. The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable. It is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls.” Paragraph: 001 Reference ID: 21a-001-20140306.

3.3 *“Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:*

- *necessary;*
- *relevant to planning;*
- *relevant to the development to be permitted;*
- *enforceable;*
- *precise; and*
- *reasonable in all other respects.*

3.4 *These are referred to in this guidance as the 6 tests, and each of them need to be satisfied for each condition which an authority intends to apply. See also guidance on the use of model conditions.”* Paragraph: 003 Reference ID: 21a-003-20190723

3.5 *“Rigorous application of the 6 tests can reduce the need for conditions and it is good practice to keep the number of conditions to a minimum wherever possible. Early engagement and positive dialogue between the local planning authority and the applicant can also result in planning permission being granted with fewer conditions attached. Effective pre-application discussions can help to establish early in the process what may need to be the subject of conditions. A Planning Performance Agreement can be used to set a timetable for when discussions about conditions will take place.*

3.6 *An applicant may, where it is feasible to do so, seek approval at the application stage for matters which may otherwise have been the subject of conditions. This can reduce*

potential delays between the decision being taken and development taking place on site.” Paragraph: 018 Reference ID: 21a-018-20190723

- 3.7 *“Any proposed condition that fails to meet one of the 6 tests should not be used. This applies even if the applicant suggests or agrees to it, or it is suggested by the members of a planning committee or a third party. Specific circumstances where conditions should not be used include:*

Conditions requiring compliance with other regulatory requirements (e.g. Building Regulations, Environmental Protection Act):

Conditions requiring compliance with other regulatory regimes will not meet the test of necessity and may not be relevant to planning. Use of informatives to remind the applicant to obtain further planning approvals and other consents may be more appropriate.

- 3.8 ***Can conditions be used to require the applicant to submit further details after permission has been granted?***

For non-outline applications, other than where it will clearly assist with the efficient and effective delivery of development, it is important that the local planning authority limits the use of conditions requiring their approval of further matters after permission has been granted.

- 3.9 *Where it is justified, the ability to impose conditions requiring submission and approval of further details extends to aspects of the development that are not fully described in the application (eg provision of car parking spaces).*

- 3.10 *Where it is practicable to do so, such conditions should be discussed with the applicant before permission is granted to ensure that unreasonable burdens are not being imposed. The local planning authority should ensure that the timing of submission of any further details meets with the planned sequence for developing the site. Conditions that unnecessarily affect an applicant’s ability to bring a development into use, allow a development to be occupied or otherwise impact on the proper implementation of the planning permission should not be used. A condition requiring the re-submission and approval of details that have already been submitted as part of the planning application is unlikely to pass the test of necessity.” Paragraph: 006 Reference ID: 21a-006-20140306*

3.11 *“Conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#), so that it is clear exactly which rights have been limited or withdrawn. Area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. The local planning authority also has powers under [article 4 of the Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#) to enable them to withdraw permitted development rights across a defined area, where justified.”* Paragraph: 017 Reference ID: 21a-017-20190723

3.12 *“Clear and precise reasons must be given by the local planning authority for the imposition of every condition.”* Paragraph: 023 Reference ID: 21a-023-20140306

4.0 Conclusion

- 4.1 It is concluded that the site history, planning assessment and approval granted by the LPA is correct and sound. However, the LPA should have been more considered and precise in the imposition of the conditions attached in the decision notice.
- 4.2 The LPA has failed to consider the previous approval for the same development on the same site, assessed under the same policy framework, and the conditions tests provided within paragraph 55 of the NPPF. For these reasons the LPA has imposed condition 10, which is clearly unreasonable and un-necessary. This appeal therefore seeks the removal of condition 10.
- 4.3 The LPA has accepted the materials schedule submitted and the re-wording proposed for condition 7, to allow the development to proceed with regard to the materials specification supplied. However, due to the unwillingness to accept that condition 10 is unreasonable condition 7 has too been refused. It is anticipated that the Inspector will accept the LPAs findings with regard to condition 7 and allow the materials schedule and the re-wording of condition 7 to be amended to relate to the materials schedule submitted.
- 4.4 The LPA has a duty to ensure that its decisions are supported with precise, necessary, reasonable and appropriate conditions. In this instance this has not been the case. The appeal is therefore accompanied by a costs application on the basis that had the LPA been more considered and responsible with its decision making this appeal could have been avoided.
- 4.5 The Inspector is therefore respectfully requested to allow this appeal and award full costs in the pursuit of this unnecessary and avoidable appeal.