

**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. It follows the withdrawal of a previous submission and concludes as follows:
 - 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.
 - The applicants have noted the concerns of neighbours in regard to a previous submission and have moderated their aspirations in terms of the use of the building so that there are a maximum of 10 classes per week. They seek a dialogue with neighbours to secure an acceptable position where amenity is safeguarded whilst allowing use of the subject building.
 - 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; as well as the common objective of wellness and the promotion of health as part of a sustainable approach to development.

4.3. In this case the current use of the building as a home gymnasium, music and relaxation facility and for domestic storage purposes. These 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 one to one Pilates studio for no more than 1 persons and 1 instructor, who shall be the occupier of the host dwelling; and not outside of the following times with a maximum of ten classes per week:

- *Monday and Friday 09.00-13.00 and 17.00-19.00*
- *Saturdays 09.00-13.00*

- 4.9. It should be noted that the applicant has considerably moderated her aspirations in light of the pre-application response and following the objections received to application reference **PLAN/2019/00765**. It is a balance which is aimed at safeguarding the amenity of neighbours whilst allowing 45-60 minute classes solely on a 1:1 basis as described in the application and for the stated hours. There will be no more than 10 classes per week. The application acknowledged the views of some neighbours and responds to the following matters:

Objection	Response
Material change of use in a residential area	It was not considered that the previous proposal for classes of 3 participants and an instructor (the applicant) was a material change of use. This is a matter of fact and a degree and this proposal seeks 1-1 instruction only which is an activity which could reasonably take place without planning permission, save for the limiting condition. Outside of the use/hours which are sought the use of the building will return to one which is incidental to the use of the dwelling and this is an important material consideration since it represents and continues as the primary use of the building. It is considered that the 1:1 classes will have an entirely similar impact as the incidental use. This incidental use includes a music studio, home office, television room, home gymnasium and hobby room. All will have some impact on amenity and this is to be weighed in the planning balance.

Noise emanating from the studio	It is clear from our observations and those of the case officer that provided the doors and windows remain closed then music is not audible from the garden. This is a consequence of the construction which is fully insulated and resistant to external noise exposure.
	The comings and goings to the subject building will be for 1 participant and the applicant and on a maximum of ten occasions per week.
Light pollution	Curtains are fitted to the facing windows and doors. These will be retained closed during periods of the 1-1 classes as is the case in domestic use. This is a matter which must be properly weighed against the use of the building incidentally to the dwelling.
Parking and highway safety	The objections on the basis of parking and highway safety are noted and this proposal is solely for 1:1 classes. There is ample offsite parking for the occupiers of the house and the single visitor. This position remains unchanged.
Wildlife	The proposal will have no effect on wildlife (Rabbits) within or outside of the application site
Viability	The matter of commercial viability is wholly irrelevant to consideration of this application.

- 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 hereby approved the windows and doors shall be fitted with curtains and these shall remain closed during the operation of 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 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. The person being instructed will be led by the applicant and would often comprise a single person. Classes would be of 45-60 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.
- 4.13. The case Officer has undertaken a site viewing to observe this matter.
- 4.14. 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.
- 4.15. In terms of parking, the site plan shows that there is sufficient space to accommodate single visitor parking for the duration of the classes and this addresses the relevant development management matter of traffic and off street parking.
- 4.16. The single participant 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. It should be remembered that the sole intention of patrons is to leave the premises after their class.
- 4.17. 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

- 4.18. 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.

- 4.19. 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. In the course of good neighbourliness any disturbance would be resolvable by the usual discourse between respective residents.
- 4.20. Provided the proposed low key 1:1 classes are controlled in the manner described then it is sufficiently low key to reflect the current level of activity.
- 4.21. 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 making this submission, the applicants acknowledge the nature of objections from some residents and have considerably moderated the proposal so that it is on a 1:1 basis and for fewer hours than previously sought. This would allow for no more than 10 classes per week and is an acceptable balance which should be judged against the primary use of the building for incidental purposes.
- 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 and wellness.

- 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 1:1 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.