

The Executive Planning Service Manager
Havant Borough Council
Public Service Plaza
Civic Centre Road
Havant
Hampshire PO9 2AX

Your ref: 88/51778

3rd May 2018

Dear Sir,

38 Western Road, Bedhampton, Havant, Hampshire.
Discharge of Condition 6 imposed on permission 88/51778.

1. We have been instructed by Marilyn Savage to request your Council to discharge Condition 6 that was imposed on planning permission 88/51778 in October 1988 because it failed the requisite tests from the outset and fails to satisfy contemporary requirements.

2. No.38 stands on the south side of Western Road, Bedhampton, which is a cul-de-sac that may only be approached from the west via Staunton Road, the south section of which terminates at the Bedhampton-Havant railway line. Bedhampton station is available for travellers to go west by train to Fratton and Portsmouth or east to Havant, Haslemere, Guildford, Woking, Clapham Junction and London Waterloo. A footbridge over the railway line affords pedestrian access to the northern length of Staunton Road and then to New Road, which forms part of the route followed by the Stagecoach no.23 bus service – a pair of stops is in place by the junction so that passengers may travel east to Leigh Park (there are 85 buses a day between 0522 and 2314 hours) or west to Southsea (there are 86 buses a day between 0606 and 2334 hours). When account is also taken of the availability of the facilities off Fraser Road (the Bidbury Schools, Hooks Lane recreation ground, the Havant Scout Centre and Havant Mens Shed), St Joseph's Catholic Church and Hall on West Street, the Library to the east of Park Road North and the Bus Station fronting Elm Lane, it is evident that 38 Western Road is a highly accessible location and its residents do not need the use of a private car to enjoy safe and convenient access to a wide range of services and facilities, including public transport by bus and train - ie this is a very sustainable location.

3. Condition 6 was imposed on permission 88/51778 in October 1988 so the Borough of Havant was required to satisfy the requirements of DOE Circular 1/85 which then prevailed re "The Use of Conditions in Planning Permissions". With regard to "Conditions restricting permitted development or otherwise restricting use", sections 67 and 69 of the circular stated that *"Both development orders and the Use Classes Order, however, are designed to give or confirm a freedom from detailed control which will be acceptable in the great majority of cases...There must therefore always be a general presumption against limiting their application in a particular case and it would be contrary to the general principle of control for an authority to prevent such permitted development or other changes of use by the widespread imposition of conditions...Because of the general presumption against such restrictions on permitted development or on changes of use which are not development, it will always be necessary to look carefully at the planning reasons for any restriction and to ensure that the condition imposed is no more onerous than can be justified (it may be helpful to refer to paragraph 31 above)."* Paragraph 31 unequivocally stated that *"Any condition which would put a severe limitation on the freedom of an owner to dispose of his property...should be avoided on these grounds."*

4. Circular 1/85 was cancelled by Circular 11/95 and it, in turn, has since made way for the National Planning Policy Framework (NPPF) in 2012 and the Planning Practice Guidance (PPG) suite in March 2014. Paragraph 206 of the NPPF states that *"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"*. In amplification of the 'six tests' set down in para.206 of the NPPF, section 21a-004-20140306 of the PPG unequivocally states that *"A condition must not be imposed unless there is a definite planning reason for it ie it is needed to make the development acceptable in planning terms...If a condition is wider in scope than is necessary to achieve the desired objective, it will fail the test of necessity"* and asserts that *"Poorly worded conditions are those that do not clearly state what is required and when must not be used."*

5. Condition 6 imposed on permission 88/51778 requires that *'Notwithstanding the provisions of the Town and Country Planning General Development Orders, the area hatched blue shall be retained at all times for the parking, loading and unloading of vehicles associated with the 3 bed unit created by this permission and shall not be used for any other purpose whatsoever unless agreed in writing with the Local Planning Authority.'* The reasons given on the decision notice for the imposition of Condition 6 are *"In the interests of highway safety and to minimise the likelihood of car parking outside the areas provided on site."* Via email at 1114 hours on 2nd May 2018, the Officers confirmed that your Council does not hold a copy of the drawing on which *'...the area hatched blue'* was imposed; without such a plan, Condition 6 is unenforceable. A condition that cannot be enforced serves no useful planning purpose, so should be discharged.

Directors: Robert Tutton BSc (Hons), MRTPI and Niall Tutton BSc (Hons), MA

Offices also at 293 Havant Road, Farlington, Portsmouth, Hampshire, PO6 1DD.

6. Double-yellow-line parking restrictions are in place on the east side of Staunton Road but unrestricted kerbside parking is allowed on the major part of its west side and, save for 'Access' and 'Disabled' restrictions, unrestricted kerbside parking is allowed on both sides of Western Road. As kerbside parking is permitted on both sides of Western Road outside no.38, it is evident that highway safety would not be impaired by '*...car parking outside the areas provided on site*' ie it was not necessary to require the retention of two parking spaces on the northeastern part of the site in the interests of highway safety. For this reason, it is submitted that Condition 6 failed the 'necessity' test from the outset.

7. As now illustrated by the Town and Country Planning (General Permitted Development) (England) Order 2015, it has long been the customary practice of Government to attribute alphabetical references to the categories of development rights, in order that there be no doubt as to the categories of rights being removed by condition. Condition 6 imposed on permission 88/51778 not only referred generally to Development Orders (plural) but failed to specify the categories of permitted development rights that were being removed. For these reasons, it is submitted that Condition 6 failed the 'precision' test.

8. It is submitted that Condition 6 imposed on permission 88/51778 failed the tests set down by Circular 1/85 from the outset, as imprecise references were made to Development Orders (plural) and the categories of permitted development rights that were being removed; the 'area hatched blue' is not shown on approved plans held by the local planning authority; and, in light of the high accessibility of the site to services, public transport and unrestricted kerb-side parking spaces outside the site, it was not necessary to require the retention of on-site parking facilities. As Condition 6 fails three (precision, enforceability, necessity) of the requisite six tests, permission should be given for its discharge.

Yours faithfully



Robert Tutton
Director