

**TOWN & COUNTRY PLANNING ACT
(1990) APPEAL BY MR & MRS S PERKINS**

RELATING TO

**VARIATION OF A CONDITION
PERTAINING TO 18/00489 AT
19B FROGMORE LANE,
WATERLOOVILLE PO8 9QN**

MLP REF: FL/19/188

DECEMBER 2019

Mark Leedale Planning
Chartered Town Planning Consultant
52 Crondall Lane,
Farnham,
Surrey GU9 7DD
01252 718855 tel/fax
markleedale@hotmail.com

Contents

- 1.0. Introduction
- 2.0. Description of the appeal site and surrounds
- 3.0. Planning history
- 4.0. Planning policy
- 5.0. The planning case
- 6.0. The planning balance

1.0. INTRODUCTION

- 1.1. This appeal is in respect of the refusal of an application seeking the variation of a condition to allow specified use of a curtilage building for 1:1 Pilates classes at specified time slots. The site is at 19B Frogmore Lane, Waterloooville PO8 9QN.
- 1.2. The application was submitted on 2nd October 2019 and was determined under powers delegated to the Head of Planning on 19th December 2019. There are various consultation responses which are attached to the appeal questionnaire.
- 1.3. This Statement sets out a description of the site and surrounds, the relevant planning history and policies; and the planning case for the development and land use. It concludes as follows:
 - The subject building performs a use which is incidental to the enjoyment of the dwellinghouse as such. Permission for the further incidental use is required by reason of the limiting condition on the related planning permission. That is to say that as a matter of fact and degree the proposed use would not fundamentally alter the nature of the primary use and is low key in terms of intensity and nature such that the incidental use of the curtilage building would remain the primary function. In essence it is working from home for the specified periods and the primary use of the building would not alter.
 - The variation of the relevant condition is wholly acceptable on its merits and would not result in any activity which would materially disturb the reasonable amenity of surrounding residents. Indeed the framing of this proposal is a wholly reasonable approach in response to concerns expressed by some neighbouring residents.
 - In seeking a variation regard is given 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 basis for the refusal of the proposal lacks a rational understanding of the activity and the nature of the use. It largely results from the level of objections and a misrepresentation of the proposed activity. In practice the proposal would involve the coming and goings of 10 visitors in a working week and within the time frames specified. The proposed time frame of classes which is proposed is not at unsociable hours and reflects a reasonable balance between participants' needs and safeguarding of amenity. There would be no noise emanating from the use; no material loss of privacy and no disturbance as a result of the use. As such the basis for the refusal to vary the condition is not sustainable is wholly without foundation.

- 1.2 On the basis of the foregoing the proposal is acceptable and the appeal should be allowed.

2.0 DESCRIPTION OF THE APPEAL SITE AND SURROUNDS

- 2.1. The appeal site comprises a semi-detached dwelling in which there is a curtilage building at the rear of the garden. At the frontage there is a hardstanding which allows for the parking of cars.
- 2.2. The surrounds are overtly urban and may reasonably be described as of suburban residential character.
- 2.3. The appointed Inspector will be able to observe the characteristics and context of the appeal site during these proceedings.

3.0 Relevant planning history

- 3.1. 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."

- 3.2. Planning permission was sought to vary the terms of the planning condition so as to allow the use of the subject building for the operation of

Pilates classes at specified times. This followed a pre-application process and the consequential moderation of the applicant's aspirations for use of the building and proposed:

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 09.00-16.00

Sundays 10.00-16.00

- 3.3 This application was withdrawn on 26th September on the advice of the Case Officer and the appeal proposal was submitted.

4.0. PLANNING POLICIES

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

- 4.2. 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.

- 3.1. 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.

5.0 THE PLANNING CASE FOR THE DEVELOPMENT

5.1. The appellant's case for the development is set out in relation to the following matters.

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

5.2. 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. The appointed Inspector will be familiar with the relevant sections of the 2019 Framework in this respect.

5.3. 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 original permission and within the remit of the limiting condition. They have an effect in terms of activity both by the applicant's family and occasional visitors.

5.4. 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 and do ordinarily make use of the subject to building as a home office, music and television room, exercise studio and home gymnasium without the need for planning permission. None of this would constitute development as described by s.55.

Is the condition reasonable and necessary?

5.5. 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.

5.6. From papers made available on the local authority web site it is probable that the condition was imposed as a result of neighbour representations to the effect that the building was proposed to be a gymnasium or other commercial use. As was confirmed by the applicant at this time this was never the

intention and this remains the case save for the limited use which is now proposed.

- 5.7. 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

- 5.8. 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*

- 5.9. It should be noted that the applicant's have considerably moderated their aspirations in light of the pre-application response and following the objections received to application reference PLAN/2019/00765 - the withdrawn application. 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.

- 5.10. 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.

- 5.11. During the appeal proceedings the applicant will be able to assist the Inspector with detailed description of that which is involved in Pilates so that an informed decision can be made. For the meantime a Participant has offered the following description to assist the appointed Inspector:

My Pilates session starts with a gentle warm up using long wide stretchy bands held between the hands in order to control the movements. From my arms held high with band stretched I lift over my head toward the base of my spine and back for a period of minutes. From the same start position I bend from one side to the other for further minutes and so on with similar exercises until I am loosened up.

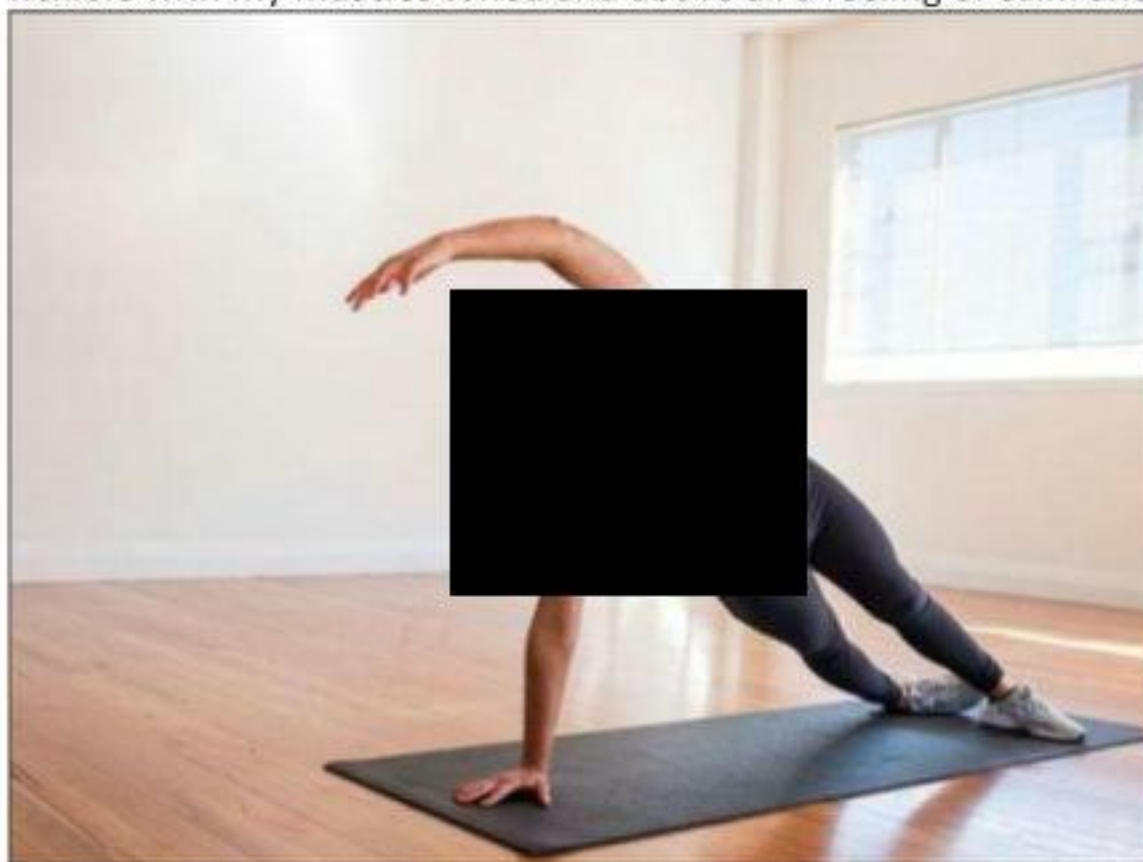
Once warmed & loosened I sit on the mat to commence the Pilates exercises, a few of which I will try to describe below. However, the method works by using the core muscles of the stomach rather than the superficial muscles and importantly through controlled breathing working the body gently but firmly through the full range of a particular movement. Some of the exercises also use small pieces of equipment such as balls and rings to concentrate the use of specific muscles.

Lying on one side with one hand supporting my head and with legs slightly in front of my hips I lift the upper leg to hip height and kick forward and back with pointed toe keeping my upper body stable. We repeat approximately 20 times and then at hip height rotate in small circles pointed foot 20 times in both directions, repeating same with other leg lying on other side.

What I call the Pilates plank is to lie face down place hands underneath shoulders. You then engage your core muscles- the basis of all Pilates exercises- and lift head slightly raising your chest extending arms forward as you lift legs a little off the mat.

My tough one usually comes towards the end and its called hundreds. Lying face up with arms at sides you curl your head and shoulder up and lift your straight legs to a reasonably sustainable level. You then begin to pump your arms up and down breathing in for 5 counts and exhaling for 5 until you reach 100.

At the end of the session we do some stretches to compliment the main sector, as you would after any type of exercise. This is followed by a short period of stillness and complete relaxation. At the end of the session I feel flexible with my muscles toned and above all a feeling of calm and well-being.

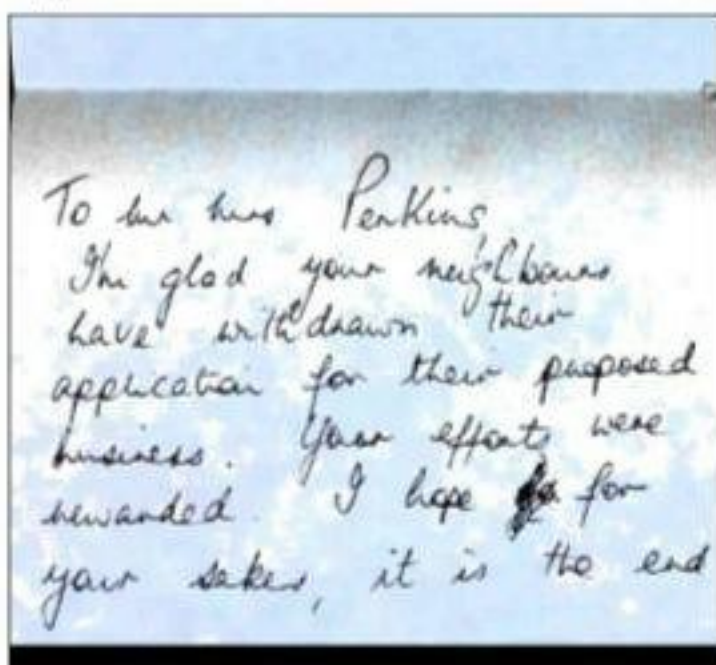


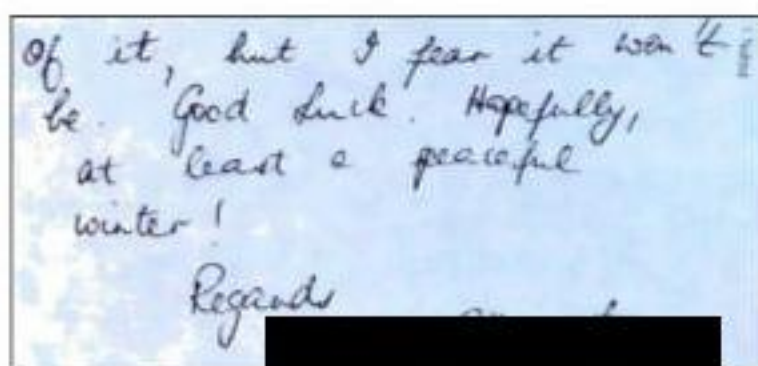
- 5.12. It is important for the appointed Inspector to understand that this application acknowledges the views of some neighbours and this is detailed in the submission. The appellant has never proceeded on a basis which ignores neighbours concerns.
- 5.13. It is also proposed that in order to safeguard 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.*
- The doors and windows to the building shall remain closed at all times during the operation of the classes*
- 5.14. In this respect it is clear that a degree of exercise, as described, will involve the generation of latent heat. The subject building is fitted with a standalone air conditioning tower which provides the necessary comfort. This is not audible outside of the building.
- 5.15. 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. There is no objection from the Highway Authority and no requirement to park on the public highway.
- 5.16. On a practical level a 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 perhaps see over the garden fence into the adjoining property (19A) 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.
- 5.17. It is important to note on the basis of the Officer's observations and those of the EHO that no noise would emanate from the building as a result of this activity. Indeed the EHO raises no objections in acknowledging this point.

- 5.18. 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. The decision lacks a coherent understanding or appreciation of this approach as set against the lawful position where use of the subject building will be entirely similar to that which is proposed by way of the variation.

Other material considerations

- 5.18. As is detailed above, 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.
- 5.19. In essence the fall back position is one which does generate a degree of domestic activity involving some noise and this may include visitors. As the applicant's children become older will involve teenagers making use of the building.
- 5.20. There may be occasions where this is readily discernible by neighbours and as a matter of good neighbourliness any disturbance would be resolvable by the usual discourse between respective residents.
- 5.20. The proposed low key 1:1 classes are controlled in the manner described and it is sufficiently low key so as to wholly reflect the current level of activity. This is a point which has been misunderstood by some neighbours who have, regrettably orchestrated a campaign of objections based on misinformation. The letter below which was presumably mistakenly posted through the applicant's door is evidence of the same.





- 5.21. There are no other material planning considerations which merit discussion and the proposed variation is acceptable on its merits.

6.0. THE PLANNING BALANCE

- 6.1. Having regard to the foregoing, the following points are made by way of conclusion:

- The subject building performs a use which is incidental to the enjoyment of the dwellinghouse as such and this will involve, from time to time, a level of activity and visitors.
- Permission for the further incidental use is required by reason of the limiting condition on the related planning permission. That is to say that as a matter of fact and degree the proposed use would not fundamentally alter the nature of the primary use and is low key in terms of intensity and nature. It follows that the incidental use of the curtilage building would remain the primary function for all but a maximum of 10 hours per week. It is a straightforward case of working from home which is supported by planning policy at local and national levels.
- This is an important material planning consideration which must be afforded considerable weight in the determination of this appeal.
- The nature of the activity of Pilates has been misunderstood and misrepresented by some neighbours. It is a low key mat based exercise regime and we take the opportunity of this appeal to inform the appointed Inspector of the nature of the land use.
- In practical terms it would involve the passing of 10 people in any week from the hardstanding area at the front of the house to the subject building.

- The activity within the building will not in any way have any material impact on the adjoining residents. That is because it is a mat based exercise activity and the building is fully insulated such that no noise will emanate from within. It is material that the EHO raises no objections to the proposal on the basis of noise emissions. The building also has a portable air-conditioning unit to ensure that there is no requirement to have doors and windows open during the 10 sessions in any week.
 - It follows that the variation of the relevant condition is wholly acceptable on its merits and would not result in any activity which would materially disturb the reasonable amenity of surrounding residents. Indeed the framing of this proposal is a wholly reasonable approach in response to concerns expressed by some neighbouring residents.
 - In seeking a variation regard is given 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 basis for the refusal of the proposal lacks a rational understanding of the activity and the nature of the use. It would involve the coming and goings of a maximum of 10 visitors in a working week. The proposed time frame of classes which is proposed is not at unsociable hours and reflects a reasonable balance between participants and safeguarding of amenity.
 - It is regrettable that some neighbours have orchestrated a campaign of objections which are based on misinformation of the nature and extent of the proposed use.
- 6.2. For these reasons the proposed variation of the subject condition is acceptable and planning permission should be granted.