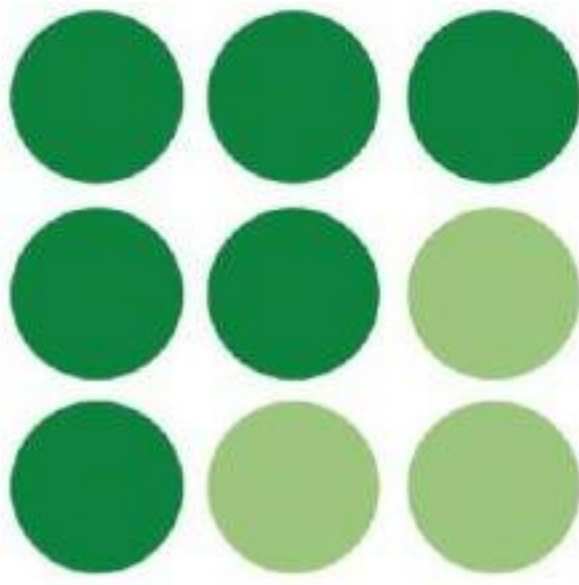




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Ms Tina Pickup
Planning Officer
Planning Services,
Havant Borough Council,
Public Service Plaza,
Civic Centre Road,
Havant.
PO9 2AX.

Our ref. JM/1056/0416

14th July 2016

Dear Ms Pickup

RELIEF FROM CONDITION 10 OF PLANNING CONSENT 09/72129/002 SO AS TO PERMIT RETENTION OF CHILDRENS' PLAY EQUIPMENT AT 36 OAK TREE DRIVE, EMSWORTH. PO10 7UJ.

Further to your e-mail of 5th July and my subsequent reply on behalf of Mr and Mrs Carr I have today submitted a planning application to your Council via the Planning Portal for the above development. (Planning Portal reference PP-05325149). The application is exempt from an application fee.

In support of the application I would make the following points.

Firstly I would argue that the condition should not have been imposed in the first place as arguably it does not fully satisfy the tests in the PPG which states: '*Conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances*'. There is nothing so exceptional about the Aubin Wood development that would have justified the imposition of the condition.

Notwithstanding this the condition was imposed and this application falls to be determined in accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004. The only policy addressing amenity issues is Policy DM18 of the Havant Local Plan (Allocations); albeit as worded it is not directly relevant as it deals with existing potential nuisance on proposed development rather than the other way round. Setting this aside the policy states that planning permission will be granted for development '*provided that projected levels of air, noise, vibration, light, water or other pollution do not have significant negative affect on the amenity of future occupiers or users of the proposed development.*' Whilst I fully accept that use of the play equipment may cause a degree of noise that does not have a **significant** negative impact on the amenities of neighbours such as to justify refusing the application.

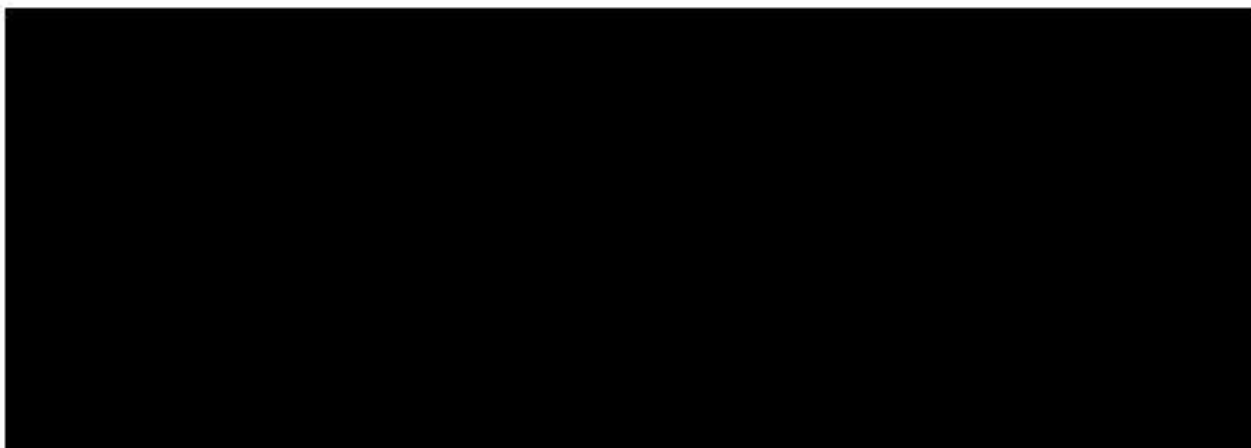
From our exchange of e-mails the LPA takes the view that the play equipment constitutes development having regard to case law flowing from the Cardiff Rating Authority v Guest Keen Baldwins Iron and Steel Co. This laid down the tests of size, permanence and attachment to the ground. In this case I accept that the equipment is attached to the ground.

Where this not the case and the same equipment were merely placed on the ground (which is feasible) then I believe your authority would be in some difficulty arguing that Section 55 applied. Were the equipment to be detached from the ground but left in position its use would have exactly the same effect on the amenities of neighbours.

My clients have taken reasonable and practical steps to ameliorate the effect of the equipment on the amenities of their neighbours. The equipment has been lowered in height by the removal of the roof structure and three trees have been planted adjacent to the boundary to screen the equipment. The fact is that children playing in a garden will occasionally create noise regardless of the use of the equipment the subject of this application. The issue is whether the use of the equipment causes additional noise over and above this and whether that noise amounts to a significant negative impact. For the reasons set out above I contend that it does not and therefore the development complies with Policy DM18.

If however, having given the application a detailed appraisal, you have any reservations or feel unable to make a favourable recommendation I request that you contact me so that we can discuss the matter further.

Yours sincerely



John Montgomery