

whl

commercial
residential
land

est. 1977

7th March 2018

Emma Chisnall
Planning Officer
Development Management
Havant Borough Council
Public Service Plaza
Civic Centre Road
Havant
PO9 2AX

[REDACTED]

Dear Emma,

Re: Fair Acre, Northney, Hayling Island
Removal of Condition 3 APP/16/00993 or App/18/00134

I am very grateful that you came out to see my clients, Mr & Mrs M Rhodes, earlier today and spent a good deal of time looking at the overlooked area and listening to their views on the original application in 1993 and in 2016.

I accept that the owner of Fair Acre is doing nothing wrong in applying to remove the planning condition as this is available under S73A of the Planning (listed buildings and conservation areas) Act 1990. , However, my clients wish to record the fact that as matters stand the applicant is in breach of the Condition and in fact never attempted to meet the Condition in full as what should have been a fixed window frame actually has hinges with opening panes of non-frosted glass. You kindly said you would look into the point about Ms. Penny Ware giving pre-application advice to the applicants agent that it was accepted that film could be used in lieu of obscure glazing and the windows simply kept shut. If true, I find this totally unacceptable and would wish to lodge a formal complaint. Of course, given the way the applicant has operated throughout this process it could just be a misleading statement designed to undermine objectors. If you could let me know please my clients would be grateful.

[REDACTED]

james@wellgarth.co.uk

London office
020 8743 6054

West Sussex
02392 413 219

Company Registration No 00409271 VAT Reg 168957058

It is also understood that you will not be reconsidering whether the internal layout should have been different or whether the size and location of the west window itself would have been acceptable without community support. Or whether 5 windows are necessary for the extension.

Instead I believe you said your assessment would focus purely on whether material harm would be caused by the removal of condition 3. I would like to challenge this view by arguing that a planning condition should not be removed without very good reason. Furthermore the test of reasonableness should be very high with the onus of proof falling on the applicant, particularly in instances where the planning applications is for planning permission to authorise development which has been carried out without complying with a planning condition to which it was subject.

following intervention by the enforcement team. The first application (APP/16/00993) sought to vary the Condition by substituting (in the west first floor window) opaque film for glazing and rather than fixed windows the applicant wanted to promise to keep the windows shut. For reasons of permanence the authority advised them this would not be supported and the application was changed to that being considered now.

At this stage I would like to advance 4 points on policy to back up my argument:

1. In your report recommending approval you wrote about the effect on neighbouring properties being a main issue for consideration. On 25th October 2016 the owners of Church Cottage wrote to you expressing support for the application on the strict understanding that the agreement reached between the applicant and immediate neighbours was considered as a condition. The applicant amended their GA drawings accordingly and on the 15th November 2016 they substituted the original drawings with these ones. Non-opening, frosted glass is illustrated and noted on those revised drawings for windows on the west and south elevations. Just so I am clear, you presumably considered the inclusion of the Condition under CS16 and NPPF guidance. This required the authority to only impose conditions if any such condition past the six-test rule. Clearly you felt the first test of "need" was satisfied at the time as you say as much in your report. Equally there is

no reason why those of "Relevant to planning, Relevant to the development to be permitted, Enforceable, Precise" fail the test. The last test being "reasonable in all other respects" and this is an interesting one. Given the applicant accepted the Condition, changed their drawings to reflect discussions with neighbours and authorities and did not appeal against the Condition how can it be argued that the condition was unreasonable when their objective now is about getting what they want and blow development control and good neighbourly relationships with those that were misled to gain support.

So what has changed to justify their application to remove Condition 3? Are there any mitigating circumstances or agreements that we are unaware of? Did they submit a design statement in support of their application as I can not see one on the HBC planning portal?

2. The reason given for imposing Condition 3 was,

"In the interests of the amenities of the occupiers of nearby properties and having due regard to policy CS16 of the Havant Borough Local Plan (Core strategy) 2011 and the National Planning Policy Framework" Again, what has changed?

3. National Planning Policy Framework, 2012 sets out some other, useful material considerations:

In Section 196, page 46, it clearly states planning law requires that applications for planning permission must be determined in accordance with the authority's development plan.

It also states *"This framework is a material consideration"*. And so, in Planning Conditions and obligations, page 47, section 203 & 206 it says local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions and *"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 respect."* I did not get the impression from you that the condition was incorrectly imposed but rather the applicant now wants it removed in its entirety because the planning authority, in the last few days, has confirmed to them that film is not an acceptable

substitute to glass nor do they accept (to quote from their application) *"It is inappropriate to damage windows by screw fixing into frame."* Any reasonable evaluation of such a request must surely come to the conclusion that the planning authority should stand by their earlier condition in the context of the original development.

For all of the above reasons there is no justification to remove the Condition, either because it is no longer appropriate, because of an inability to enforce the non-compliance or because there are new or mitigating circumstances. To do otherwise sends a very dangerous message.

4. Even if the planning department has changed its mind about whether the six tests were met – which is unlikely because nothing has changed to change the findings and it would not reflect well on their initial judgement if one is introduced at this stage – the November 2016 Planning Permission was issued subject to compliance with "The plans and other documents submitted with regards to your application" and in condition 5 therein a series of plans were listed including 'Existing and Proposed Floor and Elevation Plan Drawing No: 16/201/P01 Revision E'. This very clearly illustrates and describes non-opening windows with frosted glass. Therefore, should for whatever reason Condition 3 be removed then the approved drawings would still stand to define the development thereby permitted.

Finally, the NPPF refers to Enforcement. In section 207 it states:

"Effective enforcement is important as a means of maintaining public confidence in the planning system."

I would plead with you to also consider sections 7.39, 7.41, 7.42, 7.49, 7.70 and 7.53 as well as Policy CS16 you referred to in HBC local plan (Core Strategy), March 2011. Also Policies 1.08, 1.09, 1.11, 4.51, 5.03, 5.06, 5.35, 5.41 and 5.50 from HBC Design Guide SPD, December 2011.

You observed for yourself earlier today the anxiety this episode has caused to the owners of Church Cottage, Sunnyfield, the Residents Association and other interested parties. A deliberate and calculated attempt

to unwind development control principles and policies should be avoided when the only justification is to avoid enforcement action requiring a few hundred pounds to change the glass and screw the windows shut to maintain privacy and amenity thereafter.

Thank you for your time.

Yours sincerely,



James A Fawcett BSc(Hons)MRICS

CC David Eaves HBC
Andrew Biltcliffe - Head of Planning
Councillor Leah Turner