

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

Your ref: APP/16/00722

5th August 2016

Attention: Ms Tina Pickup

Dear Sir,

**No.36 Oak Tree Drive, Emsworth PO10 7UJ.
Relief from Condition 10 of planning consent 09/72129/002,
so as to permit retention of children's play equipment.**

1. We have been instructed by Mr and Mrs Wunderly of 17 Aubin Wood at Emsworth to thank you for notifying them of your Council's receipt of planning application APP/16/00722 and to inform you that they **RAISE OBJECTION** to this proposal, for the reasons set out below.

2. The boundary fence between 36 Oaktree Drive and 17 Aubin Wood is 1.65 metres in height and the west-facing lounge window lies just 9.5 metres away from the common boundary. The raised platform of the play equipment at 36 Oaktree Drive lies 1.5 metres above the ground and just 1.7 metres away from the common boundary so, notwithstanding a slight difference in ground levels, clear views are afforded from that elevated vantage over the fence and directly into the rear garden, lounge and right through to the front door of 17 Aubin Wood – for children sitting/standing on the platform and adults who are obliged to assist their youngsters. The platform is an elevated position which affords views into neighbours' gardens and homes and even if people on the platform restricted their attention to use of the equipment, their very presence would be clearly evident, thereby detracting from the sense of privacy.

3. Condition 10 of permission 09/72129/002 was imposed on 28th February 2011 and states that *"Notwithstanding the provisions of any Town and Country Planning General Permitted Development Order, no extension, building or structure permitted by Part 1, Classes A, D and E of the 1995 Order, as amended, shall be erected within the curtilage of the dwellings hereby permitted without the prior written approval of the Local Planning Authority"*. The Reason given for the imposition of Condition 10 was *"To ensure the appearance of the development is satisfactory and, having due regard to saved Policy D1 of the Havant Borough District Wide Local Plan 1996-2011, which forms part of the Havant Borough Local Development Framework and Planning Policy Statement 1"*. Class A of Part 1 relates to *'The enlargement, improvement or other alteration of a dwellinghouse'* and Class D to *'The erection or construction of a porch outside any external door of a dwellinghouse'* so they are not relevant to the consideration of this proposal; Class E, on the other hand, relates to *'The provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such or the maintenance, improvement or other alteration of such a building or enclosure'* and is central to the consideration of this proposal. Havant Borough Council was right to be cautious by its imposition of Condition 10 permission 09/72129/002; the development proceeded without challenge to the imposition of Condition 10; and houses have been acquired in the expectation that Condition 10 would be retained and enforced. If

Mr and Mrs Carr had exercised due diligence, they would have been aware from the outset that their estate is the subject of Condition 10 and appreciated that a special measure had been put in place to control the erection of a new structure in their garden.

4. As Condition 10 notably provides for *amended* provisions of the GPDO to bear on its application, it is appropriate to also have regard to the Town and Country Planning (General Permitted Development) (England) Order 2015, section E1 of which states that *'Development is not permitted by Class E if...the height of the building, enclosure or container would exceed...2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse'*. Central Government has recently recognised that new restrictions needed to be put in place to restrict the height of a new structures within a residential curtilage, to ensure that the amenities of neighbours are respected.

5. Policy D1(iv) of the Havant Borough District Wide Local Plan 1996-2011 ('High Quality Design') required that development *'Does not adversely affect the amenities of occupiers of neighbouring properties'*; although it has given way to Policy CS16 Havant Borough Core Strategy on the same subject, a vital requirement of the contemporary adopted policy (1.e) is that *'The development does not cause unacceptable harm to the amenity of neighbours through...the loss of privacy, outlook, noise and overlooking'*. While Policy CS16 sets down Havant Borough Council's requirements insofar as they relate to the prospective impact of development on the area that would **receive** the proposal, Policy DM18 of Havant Borough Local Plan (Allocations) sets down the Council's expectations insofar as they relate to the prospective impact of environmental factors on the development that is **proposed** – one is a corollary of the other and, taken together, they address different issues. We do not therefore accept the contention by Tanner and Tilley in their letter dated 14th July 2016 (ref:JM/1056/0416) that *'The only policy addressing amenity issues is Policy DM18 of the Havant Local Plan (Allocations)'*. The applicants' agent has mistakenly focused on Policy DM18 (which is intended to protect a proposal **from** pollution) and failed to direct his attention to the **impact** of the play equipment on the amenity of the recipient neighbours, as is required by Policy CS16.

6. Tanner and Tilley acknowledge that *'...use of the play equipment may cause a degree of noise'* but contend that such use would not have such a significant negative impact on the amenities of neighbours as to justify a refusal of consent. We hold a contrary view and take issue on the point – our clients have first-hand knowledge and experience of the level of excitement (and consequent noise) which can be generated by the use of this equipment – it is significantly higher than one would normally expect from children playing in a contained garden at ground level. In our submission, retention of the play equipment **would** *'...cause unacceptable harm to the amenity of neighbours through...the loss of privacy, outlook, noise and overlooking'* and thereby fail to satisfy the requirements of Core Strategy Policy CS16.

7. SUBMISSIONS.

A. Condition 10 was imposed on permission 09/72129 in February 2011; the development proceeded without challenge to its imposition; and the 48 dwellings of the Aubin Wood development have been acquired in the knowledge and expectation that the condition will be retained and enforced.

B. The applicants' agent misdirected himself by his reliance on Policy DM18 of the Havant Local Plan (Allocations) when it is actually Core Strategy Policy CS16(1.e) which provides the central test that is applicable in this case.

C. The childrens play equipment that has been erected in the rear garden of 36 Oaktree Drive causes unacceptable harm to the amenity of neighbours through loss of privacy, outlook, noise and overlooking and consequently fails to satisfy the requirements of the development plan.

8. For these reasons, our clients contend that the play equipment that has been erected in the garden of 36 Oaktree Drive fails to satisfy the requirements of the development plan (Core Strategy Policy CS16) and, as no other material considerations suggest otherwise, planning permission should be **REFUSED** and authority sought for the service of an **ENFORCEMENT NOTICE** which requires its removal.

9. Should, notwithstanding this objection, you are minded to support this proposal, we would be grateful if you would kindly arrange for the application to be presented to the Development Management Committee for decision, in order that our clients' concerns may be pursued through a deputation. Thank you.

Yours faithfully



Robert Tutton
Director