

The Head of Planning Services
New Forest District Council
Apple Tree Court
Lyndhurst
Hampshire SO43 7PA

23rd December 2020

Your ref: 02/74096
Our ref: AB/5780

Dear Sir

Re: Application made under Section 73 of the Town and Country Planning Act 1990 for the Removal of Condition 7 of Planning Permission Ref. 02/74096 at The Old Railway Station, Woodgreen Road, Breamore SP6 2AB

The following letter is prepared in support of an application made under Section 73 of the Town and Country Planning Act 1990 (herein 'the Act') for the removal of a planning condition from permission ref. 02/74096 at the Old Railway Station, Breamore.

Section 73 allows for the determination of applications to develop land without compliance with conditions previously attached to an earlier grant of consent. Provision 73(2) of the Act states clearly that, on such an application, the Local Planning Authority shall only consider the question of the conditions subject to which the planning permission should be granted.

The application is made on the basis that the condition is no longer necessary in planning terms, having regard for recent changes to the Town and Country Planning (Use Classes) Order 1987 (as amended).

The Council in granting planning permission for the redevelopment of the site comprising a change of use and alterations to the existing building from its original function as a station on the now lost railway network, to a Class B1 use, imposed a restrictive condition which seeks to place a limitation on the manner in which the building may be occupied. The decision notice relating to the application and the condition in question; Condition 7, is appended to this letter at **AB1**.

The Government has recognised the pressure placed on existing uses by market conditions and the need to facilitate a more flexible built environment where the use of

buildings can change to respond to economic circumstances and particular localised needs. The changes to the Use Classes Order sees a number of former business, retail and community uses amalgamated to form one cohesive use class: 'Class E'.

The compiling of these uses into a single class facilitates flexibility in the manner that buildings can be used and to see their occupancy in a sustainable manner. There is no benefit in a building being left vacant; particularly a building which has some interest in terms of its history and pattern of use. The building is not listed and is not a non-designated heritage asset, but it is still of some value locally. To ensure it can be maintained, it is important that it can be put into a viable use.

The former owner of the property sought consent from the Council to change the use of the building to use as a holiday let under Application Ref. 16/10231. The Council's Officers recommended approval of the application, but this was later refused by the planning committee because it was deemed the proposal would result in the loss of an employment use, which was deemed not to have been proven unviable. Officers were content that the absence of sufficient marketing was outweighed by the need to see the building put into a viable use. The Officer's Report and Decision Notice are appended at **AB2** for reference.

The former owner had undertaken some marketing at that time; albeit to a degree which was considered inadequate by the Planning Committee. The result of that marketing had seen no interest in the site. Since the application was made in 2016, the site has sat unoccupied. There has been no interest from other parties to occupy it for its lawful purpose for a Class B1 use.

The Applicant has submitted a statutory declaration from the previous owner which confirms the manner in which the site was occupied, and when it was last occupied for a Class B1 use. Since that time, it has sat vacant. The declaration is appended at **AB3** for reference.

The site has sat vacant therefore for in excess of six years. The site has not sat vacant due to a desire to see it unoccupied, but rather that its use class restriction has prevented any reasonable pattern of occupancy and interest in the site. The location of the building and its size do not make it attractive to the market in this restricted pattern of use.

As aforementioned, the Government have recognised the need for flexibility in terms of the use of buildings to allow them to be put in to use and viably occupied as opposed to sitting vacant and disused.

The Applicant is not seeking to formally change the use of the building, but rather to relax restrictions imposed by the Council which prevent the use of the building in accordance with those purposes which the Government considers are appropriate changes of use which are capable of occurring without the need for express planning consent; that is to say, those use classes which fall within 'Class E' of the Use Classes Order (as amended).

The amalgamation of use classes within the UCO to form Use Class E facilitates the flexible change between different business and community uses without the need for permission. The current restrictive condition which prevents the action of the Use Classes Order is not reasonable or necessary and is no longer relevant to planning legislation as it exists.

If the application to change the use of the redundant station to an office use were sought now, there would be no need to restrict this use specifically to a much more constrained use class, but rather it would have a Class E use and the ability to respond flexibly to economic circumstances to ensure it can be occupied for a viable purpose.

If the building continues to sit unoccupied, it will degrade and its value to local character will be diminished. A building sat redundant and disused will continue to make no contribution to local vitality and viability and be harmful to local amenity.

The Framework defines a list of tests against which conditions should be assessed; both in terms of whether it is appropriate to impose new conditions and having regard to the continuing acceptability of conditions which exist on earlier grants of consent.

It is necessary therefore to have regard for the 6 tests as set out at Paragraph 55 of the Framework, which states that planning conditions should be kept to a minimum and only imposed where they are:

- Necessary;
- Relevant to Planning;
- Relevant to the development to be permitted;
- Enforceable;
- Precise, and;
- Reasonable in all other respects.

In this case, it is considered that the condition fails the tests of necessity and reasonableness and that the restriction of the lawful use of the building is no longer relevant for the purposes of planning.

The restriction of the use of the building was imposed; as the reason cited on the decision notice confirms, for the purposes of protecting the amenities of the area. The use of the building for any other purpose falling within Class E will not harm local amenity. The site is surrounded by the predominance with residential uses to the south and east and there is a commercial use to the west. This is not an isolated building and any of the other uses falling within Class E would not be harmful or inappropriate in this context.

It is not reasonable to maintain a restriction which is contributing towards to inability for the building to be used and occupied. This is not of benefit to the character of the area, or to the retention of the property, which has some heritage interest in terms of its former use.

As set out above, in accordance with the Use Classes Order, it is not reasonable or necessary to restrict the use of the building to a limited Class B1 use and this constraint is no longer relevant for the purposes of planning, which seeks to enable flexibility. The Council's reason for imposing the condition is not conflicted with in putting the building in to a positive use. The Applicant considers that the building being left to degrade and sitting vacant will be more harmful to local amenity than it being put into a sustainable pattern of use.

A condition does not need to fail all of the tests of Paragraph 55 of the Framework to warrant removal, it need only fail on a single ground. As noted above, it is the Applicant's contention that the condition fails on several grounds and can now be reasonably removed having regard for the direction of the Use Classes Order.

It is considered therefore that the Condition should reasonably be removed.

Summary

The application does not allow for a reassessment of the development in accordance with Local Planning Policy, the application only allows the Local Authority to consider the matter before them which is (1) whether the four conditions meet the relevant tests and need to be retained.

Section 73 of the Act does not allow for a consideration of any other matters beyond that subject of the condition to which a variation/removal is sought.

The applicant has provided justification for why they consider the condition is no longer reasonable or necessary and is no longer relevant for the purposes of planning. The Condition can therefore reasonably be removed.

Should the Council disagree, I would request that the Case Officer get in contact at their earliest availability. Otherwise, permission for the removal of the condition in full should justifiably be granted.

Yours sincerely



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Encl.

AB1 – Decision Notice relating to Application Ref. 02/74096

AB2 – Officer's Report and Decision Notice relating to Application Ref. 16/10231

AB3 – Statutory Declaration provided by the previous owner