

Our ref: PPS1699

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Date: 17th February 2021

South Downs National Park Authority
Planning
South Downs Centre
Midhurst
West Sussex
GU29 9DH

Dear Sir/Madam,

Certificate of Lawful Existing Use or Development (CLEUD) Application at The Black Barn, Knighton, West Tisted, Arlesford, SO24 0HJ

I hereby submit via the Planning Portal an application under Section 191 (1) (b) of the Town and Country Planning Act 1990 ('the 1990 Act') to confirm that planning permission 19/03471/CND in relation to the change of use of the Black Barn ('the Barn') at Knighton, West Tisted Road, West Tisted, Alresford has been lawfully implemented.

The application comprises:

- This covering letter;
- Application form;
- Site Location Plan;
- Photographs – Black Barn Parking Area 11 January 2021;
- Statutory Declaration from Mr Clive Tosdevine, Farm Manager; and,
- Email from Case Officer dated 23 November 2020.

Background

By way of background, planning permission was granted on 6 March 2018 for the change of use of a former agricultural building ('The Black Barn') on land at West Tisted to one two bed holiday let with external alterations (Reference: 17/05306/FUL, and referred to as the '2018 Planning Permission').

Condition 7 stated: *"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking, re-enacting or modifying that Order) the accommodation hereby approved shall not be used other than for holiday purposes and shall not be used as any individual's main or sole residential dwelling. The applicant, or their successor(s) in title, shall maintain a comprehensive up-to-date register listing occupiers of the holiday accommodation hereby approved, their main home addresses and the dates of occupation at the site. The said register shall be made available for inspection by the Local Planning Authority at reasonable notice."*

A fresh Planning Permission under Section 73 of the of the 1990 Act was subsequently granted to remove condition 7 on 15 October 2019 (19/03471/CND). In accordance with Planning Practice Guidance (PPG) Paragraph: 040 Reference ID: 21a-040-20190723, restated all conditions (except Condition 7), although an amended version of Condition 1, as follows:

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“Condition 1 of this permission states: “The development hereby permitted shall be begun on or before the 6 March 2021, the expiration of three years from the date of permission reference SDNP/17/05306/FUL.”

It is this subsequent planning permission issued under Section 73 of the 1990 Act which the applicant has implemented, as follows.

Purpose of an application under Section 191 of the 1990 Act

The purpose of a Lawful Development Certificate (LDC) application is to establish that *“...an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990”* (Planning Practice Guidance (PPG) 001 Reference ID: 17c-001-20140306).

The statutory framework covering *“lawfulness”* for lawful development certificates is set out in section 191(2) of the 1990 Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

The applicant is responsible for providing sufficient information to support an application. If a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability (PPG, Paragraph: 006 Reference ID: 17c-006-20140306).

Existing Use

As noted above, confirmation is sought through a Certificate of Lawfulness of an Existing Use or Development (CLEUD) under Section 191 (1) (b) of the 1990 Act that the change of use of the Black Barn to a two bed Class C3 residential unit, approved under 19/03471/CND, has been lawfully implemented with recent implementing works described below. In the context of Section 191 (2) of the 1990 Act, this application therefore seeks to establish that no further planning permission is required for this development.

Establishing when a permission has been lawfully commenced & implemented

Section 56 (2) of the Town and Country Planning Act 1990 establishes that *“development is taken to be begun on the earliest date on which a material operation is carried out”*. A material operation is defined in Section 56 (4) the 1990 Act and includes any works of construction, demolition, digging foundations, laying out or constructing a road and a material change in the use of the land. It is the case that when a permission has been commenced prior to its expiration, the permission remains extant until and unless it is superseded by a subsequent permission or some other use.

Case law, in particular the judgments reached under *Whitley and Sons v Secretary of State for Wales and Clwyd CC* [1992] 64 P & CR 296, *Hart Aggregates Ltd., R (on the application of) v Hartlepool Borough Council* [2005] EWHC 840, and *Greyfort Properties Ltd v Secretary of State for Communities and Local Government & Anor* [2011] EWCA Civ 908, have led to the establishment of two general tests to identify if a planning permission has been lawfully implemented.

Under *Whitley*, it was held that if an action contravenes such a condition, that action cannot be described as commencing development. It generally reads:

“... If the operations contravene the conditions they cannot be properly described as commencing the development authorised by the permission. If they do not comply with the permission, they constitute a breach of planning control and for planning purposes will be unauthorised and thus unlawful.”

Under *Hart*, two main principles were identified regarding the lawfulness of a development which was commenced without the discharge of pre-commencement conditions:

1. Is the pre-commencement condition explicitly worded to be a prohibition that makes it clear that the actual start of the development is conditional on the condition being satisfied?
2. Does the pre-commencement condition go ‘to the heart’ of the permission?

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Under this ruling, any breach to a condition considered to be a "*condition precedent*" that goes "*to the heart of the permission*" would mean that the planning permission in question was not lawfully implemented.

Building upon these judgements, the ruling under *Greyfort* reached the conclusion that, for a planning permission to have been lawfully implemented, the following tests must be passed:

1. Whether any works were carried out by the developer to a sufficient extent as to amount to a commencement of development within the meaning of the relevant section of the Planning Act; and
2. Whether pre-commencement conditions of the permission were fully complied with.

Has 19/03471/CND been lawfully implemented?

I set out below how work at The Black Barn satisfies the *Greyfort* tests.

Works undertaken to commence development

Accompanying this application are series of 7 no. photographs showing that on 11th January 2021, the Applicant undertook works to 'carve out' the parking area as shown on approved drawing no. SPP/09/12/2 Rev A. This work included scrapping out the parking area. On the following day, an external contractor (Geoff Bicknell Digger Hire) laid hardstanding in the form of road planings, representing the final surface of the parking area.

This work is verified by the Statutory Declaration of Mr Clive Tosdevine who is the Farm Manager for the Applicant, and who oversaw the works (as enclosed with this application).

The purpose of the work described above and in Mr Tosdevine's Statutory Declaration was to lay out the access road and car park area to enable the conversion of the barn to take place. In accordance with Condition 5 of 19/03471/CND, the parking area was required to be provided before the use of the barn itself could commence. It therefore formed a condition precedent. The scale of work to create the access and parking area is such that it clearly sits within the definition of a material operation under Section 56 (4) of the 1990 Act.

RPS was advised by the Case Officer by email dated 23 November 2021 (as enclosed with this letter) that, in his opinion, and in agreed with RPS's own conclusion, that "*construction works in setting out and carrying out the parking, as detailed on the approved plans, would represent the implementation of the permission*".

RPS considers that the first test has been passed by the works that have been carried out.

Were pre-commencement conditions complied with?

As noted above, aside from a variation to the time limit of commencement (condition 1) and the removal of the 'holiday only' condition, 19/03471/CND restated the conditions imposed under 17/05306/FUL, leaving six conditions in total. Conditions 1 to 4 are all 'compliance only' conditions and do not require any details to be submitted to and approved by the Local Planning Authority prior to the commencement of development, or at any other stage of the development.

Condition 5 requires the provision for parking shall have been made within the site in accordance with the approved plans "*before use of the development is commenced*". The car parking area shall be retained thereafter. Condition 5 also does not require any details to be submitted to and approved by the Local Planning Authority prior to the commencement of development, and is therefore also a 'compliance only' condition, but one which must be carried out before the use has started. The work described above has been required to comply with condition 5, on the basis that the condition states the parking area must be implemented before the use of the development is commenced. These physical operational works are therefore fundamental to the operational use of the building, as per the principles established under *Murfitt v Secretary of State for the Environment* [1980] 40 P & CR 254 where it was held that structures may lawfully be enforced against if they are "*part and parcel*" of the unauthorised change of use.

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Condition 6 requires a detailed boundary treatment plan to be submitted to and approved in writing by the Local Planning Authority before the Barn is first bought into use. Whilst it is unusual in its phrasing, the purpose behind the condition is that prior to occupation of the barn, the boundary treatments must be agreed with the Local Planning Authority. It does not represent a condition precedent therefore. An application to discharge this condition will be submitted to the Local Planning Authority in due course.

There are no pre-commencement conditions which need to be complied with, which would render the development non-compliant with the second *Greyfort* test.

Conclusions

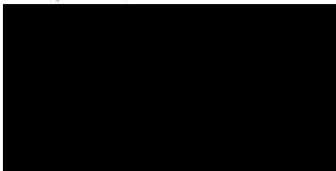
In summary, the works shown in the accompanying photographs and described by Mr. Tosdevine constitute a material operation under Section 56 (4) of the 1990 Act, one which is required at the start of the implementation of the permission. There are no pre-commencement conditions that must be discharged prior to the commencement of development, and as such, on application of the *Greyfort* tests, the development can be taken to have lawfully commenced in accordance with Section 56 (2) of the 1990 Act.

Indeed, the planning permission's case officer's own informal view is that the works to provide the parking area are sufficient to implement the permission.

The evidence provided with this application demonstrates that 19/03471/CND in relation to the conversion of the Black Barn to a two bedroom residential unit was lawfully implemented on 11th January 2021, in compliance with Condition 1 of the Planning Permission Reference: 19/03471/CND. No further planning permission is required and therefore the proposals are lawful for the purposes of Section 191 (2) of the 1990 Act. The CLEUD must be granted on this basis.

We trust that the Local Planning Authority agrees with the above, and we look forward to receiving the Certificate in due course. In the meantime, if there are any queries, please do not hesitate to contact me on the details below.

Yours faithfully,
for RPS Consulting Services Ltd

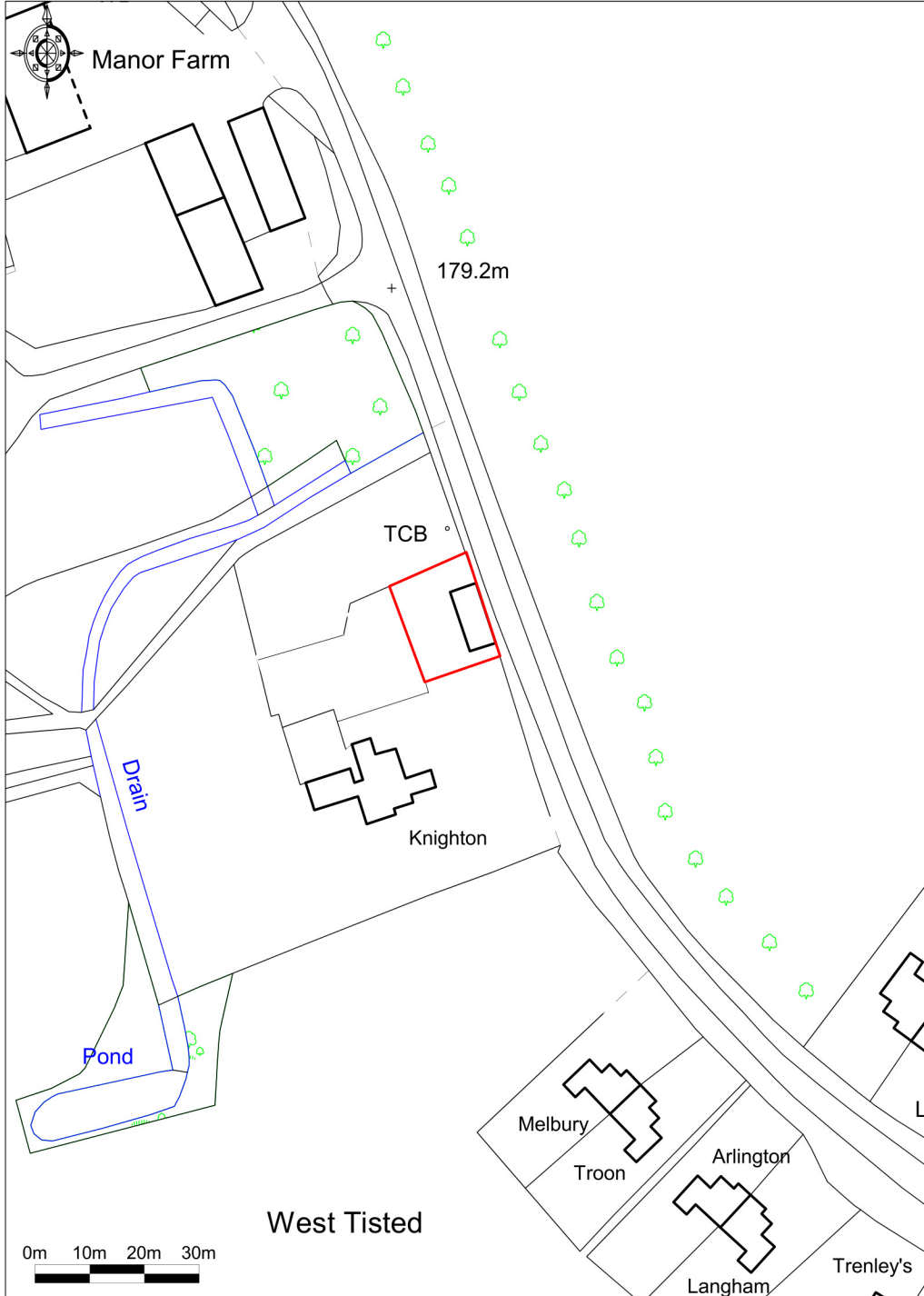


Nayan Gandhi
Principal Planner



Encl

Location Plan



Enclosures

Enclosure 1 – Photograph of Site taken on 11th and 12th January 2021

Photographs – Black Barn Access and Parking Area, taken on 11st and 12th January 2021

1.



2.



Photographs – The Black Barn Access and Parking Area – 11st and 12th January 2021

3.



Photographs – The Black Barn Access and Parking Area – 11st and 12th January 2021

4.



Photographs – The Black Barn Access and Parking Area – 11st and 12th January 2021

5.



6.

Photographs – The Black Barn Access and Parking Area – 11st and 12th January 2021



7.

Photographs – The Black Barn Access and Parking Area – 11st and 12th January 2021



Photographs – The Black Barn Access and Parking Area – 11st and 12th January 2021

Enclosure 2 – Statutory Declaration from Mr Clive Tosdevine, Farm Manager

Statutory Declaration

**In support of application for Certificate of Lawfulness of Existing Use or Development
under Section 191 of the Town and Country Planning Act 1990 (as amended)**

Change of use of former agricultural building to one two bed

Residential unit and external alterations

at

The Black Barn, Land Adjoining Knighton, West Tisted Road, West

Tisted, Alresford, Hampshire, SO24 0HJ

I, Clive Tosdevine, farm manager of West Tisted Manor Estate and based at the main offices located at West Tisted Road, West Tisted, Alresford, Hampshire, SO24 0HL, solemnly and sincerely make this Statutory Declaration in support of an application for a Certificate of Lawfulness of Existing Use or Development (CLEUD).

I DECLARE AS FOLLOWS:

1. I am the Farm Manager of the West Tisted Manor Estate farm for RS Hill and Sons, the owner of the property known as 'The Black Barn' ('the Barn'). The property is subject to a planning permission reference number 19/03471/CND, issued on 15th October 2019.
2. On 11th and 12th January 2021, I oversaw the works on the land around the Barn shown in photographs 1-7 of 'Annexe A', which was undertaken by farm staff and an external contractor, Geoff Bicknell Digger Hire.
3. The purpose of the work carried out on these dates was to create the parking area for the conversion of the Barn under planning permission reference 19/03471/CND, as shown on Jon Dale Architect drawing no. SPP/09/12/2 attached to that permission.
4. The condition of the site prior to the commencement of work on 11th January 2021 can be seen in photographs 1 to 4. The work involved scraping out the parking area to the north and eastern (rear) elevations of the Barn with a mechanical excavator, which can be seen in photograph 5, and laying a hard surface (tarmac planings), which can be seen in photographs 6 and 7. The site was levelled with a heavy roller, as shown in photograph 7.

5. The work described in paragraph 4 above took place over the course of two days, being 11th and 12th January 2021.

I make these solemn declarations conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Declared by Clive Tosdevine, Farm Manager for RS Hill and Sons



This 29 Day of January 2021

Enclosure 3 – Email from Case Officer dated 23rd November 2020.

Nayan Gandhi

From: Harding, Matthew <[REDACTED]>
Sent: 23 November 2020 16:56
To: Nayan Gandhi
Subject: RE: Application ref: SDNP/19/03471/CND - Knighton update

CAUTION: This email originated from outside of RPS.

Dear Nayan,

Thank you for your email.

I have been over your query and would concur that construction works in setting out and carrying out the parking, as detailed on the approved plans, would represent the implementation of the permission. I would advise that records are kept of when these works take place, should the matter be questioned in the future.

Please be mindful that these comments are on the basis of my officer opinion only and for a legal determination on whether these works would represent the implementation of the permission you client may wish to consider submitting a certificate of lawfulness to us.

Finally, I note the building was not in the best condition when I visited a good while back, so your client may wish to consider protecting the building from any further damage / decay if the conversion works may be delayed for some time.

I hope that helps, and if you have any further queries please let me know.

Kind regards

Matthew Harding

Principal Planning Officer
East Hampshire District Council
Penns Place
Petersfield
GU31 4EX

[REDACTED]

Your privacy matters, go to: www.easthants.gov.uk/privacy-policy

From: Nayan Gandhi <[REDACTED]>
Sent: 23 November 2020 14:14
To: Harding, Matthew <[REDACTED]>
Subject: RE: Application ref: SDNP/19/03471/CND - Knighton update

Dear Matthew,

You assisted us with the above application (Decision Notice attached). The client is now looking to implement the permission, and are proposing to carve out the parking area on the approved drawings (as per the attached markings), in compliance with Condition 5. This is on the basis that the condition states the parking area must be implemented before the use of the development is commenced, hence it can be the first act of implementation. Would you agree that this is sufficient to implement the permission?

The farm estate is reluctant to spend too much money on things at present whilst Brexit impacts are looming in 6 weeks time; however, they are conscious that they need to get moving on this permission and November/December remains an ideal time to do this, both for ecology reasons but also as farm staff are not busy with crops, etc.

Please would you kindly let me know, thank you.

Kind regards,

Nayan

Nayan Gandhi

Principal Planner
RPS | Consulting UK & Ireland



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RPS Group Plc, company number: 208 7786 (England). Registered office: 20 Western Avenue Milton Park Abingdon Oxfordshire OX14 4SH.

RPS Group Plc web link: <http://www.rpsgroup.com>

Mr Nayan Gandhi
RPS Group Plc
20 Western Avenue
Milton Park
Abingdon OX14 4SH

Our Ref: SDNP/19/03471/CND
Contact Officer: Matthew Harding
Tel. No.: 01730 234233

15th October 2019

Dear Sir/Madam

TOWN AND COUNTRY PLANNING ACT 1990
Town and Country Planning (Development Management Procedure) (England) Order
2015

Proposal: Removal of condition 7 of SDNP/17/05306/FUL - removal of holiday/tourist restriction

Site Address: Knighton, West Tisted Road, West Tisted, Alresford, Hampshire, SO24 0HJ

Please find enclosed the Decision Notice in relation to the above application. If you are acting as an Agent please ensure that a copy is given to the applicant. **Before proceeding, please read the following important information which affects this Notice.**

Failure to comply with any conditions may invalidate the permission and may result in enforcement action. Some conditions may require further details or samples to be submitted for approval. Other conditions may contain timescales or stages against which compliance should be obtained and before works are commenced. Most categories of permission also require a fee for each request for discharge of condition/s, further details of which are set out in the attached information sheet.

*The South Downs National Park Authority has adopted the Community Infrastructure Levy Charging Schedule, which will take effect from 01 April 2017. **This application is liable for Community Infrastructure Levy and will be subject to the rates set out in the Charging Schedule** (<https://www.southdowns.gov.uk/planning/planning-policy/community-infrastructure-levy/>). Further information can be found on the same webpage under 'Frequently Asked Questions'. If you have any questions, please contact CIL@southdowns.gov.uk or tel: 01730 814810.*

Yours faithfully



TIM SLANEY
Director of Planning
South Downs National Park Authority

East Hampshire District Council, Penns Place,
Petersfield, Hampshire, GU31 4EX
Tel: 01730 266551 Email: planningdev@easthants.gov.uk

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TOWN AND COUNTRY PLANNING ACT 1990
Town and Country Planning (Development Management Procedure) (England) Order
2015

Application No: SDNP/19/03471/CND

Proposal: Removal of condition 7 of SDNP/17/05306/FUL - removal of holiday/tourist restriction

Site Address: Knighton, West Tisted Road, West Tisted, Alresford, Hampshire, SO24 0HJ

GRANT OF PLANNING PERMISSION

In pursuance of its powers under the above mentioned Act, the South Downs National Park Authority as the Local Planning Authority hereby **GRANTS** Planning Permission for the above development in accordance with the plans and particulars submitted with your application received on 18th July 2019 .

This permission is subject to the following conditions:-

1. The development hereby permitted shall be begun on or before the 6 March 2021, the expiration of three years from the date of permission reference SDNP/17/05306/FUL.

Reason: To comply with the provisions of Section 91 (1) of the Town and Country Planning Act 1990 (as amended)./ To comply with Section 51 of the Planning and Compulsory Purchase Act 2004

2. The development hereby permitted shall be carried out in accordance with the plans listed below under the heading "Plans Referred to in Consideration of this Application", together with those as outlined within planning permission SDNP/17/05306/FUL.

Reason: For the avoidance of doubt and in the interests of proper planning.

3. The external materials to be used shall match, as closely as possible, in type, colour, and texture those of the existing building unless details of other suitable materials are otherwise agreed in writing by the local planning authority.

Reason - To ensure that a harmonious visual relationship is achieved between the new and the existing developments.

4. Development shall proceed in accordance with the ecological mitigation, compensation and enhancement measures detailed within the Bat Surveys report (EcoSupport, September 2017) unless otherwise agreed in writing by the Local Planning Authority.

Reason - To protect biodiversity in accordance with the Conservation Regulations 2010, Wildlife & Countryside Act 1981, the NERC Act (2006), NPPF and with Policy CP21 of the East Hampshire District Local Plan: Joint Core Strategy.

5. Before use of the development is commenced provision for parking shall have been made within the site in accordance with the approved plans and shall be retained thereafter.

Reason - To ensure adequate on-site car parking provision for the approved development.

6. The development hereby approved shall not be first brought into use until a detailed boundary treatment plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include details of the positions, design, materials/species of the boundary treatments to be erected/planted. The approved details shall be fully implemented before the use of the development is commenced and/or any part of the development is occupied and shall be retained thereafter.

Reason - To ensure an appropriate standard of visual amenity in the area

INFORMATIVE NOTES

These are advice notes to the applicant and are not part of the planning conditions:

- 1. Crime and Disorder Implications**

It is considered that the proposal does not raise any crime and disorder implications.

- 2. Human Rights Implications**

This planning application has been considered in light of statute and case law and any interference with an individual's human rights is considered to be proportionate to the aims sought to be realised.

- 3. Equality Act 2010**

Due regard has been taken of the South Downs National Park Authority's equality duty as contained within the Equality Act 2010.

- 5 The proposed development referred to in this planning permission is a chargeable development liable to pay Community Infrastructure Levy (CIL) under Part 11 of the Planning Act 2008 and the CIL Regulations (as amended).

In accordance with CIL Regulation 65, the South Downs National Park Authority will issue a Liability Notice in respect of the chargeable development referred to in this planning permission as soon as practicable after the day on which planning permission first permits development. Further details on the Authority's CIL process can be found on the South Downs National Park Authority website:

<https://www.southdowns.gov.uk/planning/community-infrastructure-levy/>

Reasons: For the avoidance of doubt and in the interests of proper planning.



TIM SLANEY

Director of Planning

South Downs National Park Authority

15th October 2019

NOTES TO APPLICANTS / AGENTS

Fees for discharge of planning conditions

Fees apply for the submission for any consent, agreement or approval that are required by a planning condition. The fee chargeable is £116 per request or £34 where the related permission was for extending or altering a dwelling house or other development in the curtilage of a dwelling house. **The fee is payable for each submission made regardless of the number of conditions it is seeking to discharge.**

A fee is payable for conditions related to planning permissions and reserved matter applications only. A fee is not required for conditions attached to listed building consents and conservation area consents. The requirement to make this charge is set out in Government Circular 04/2008.

You may wish to use the standard form to accompany your submission, or set out your requests in writing, clearly identifying the relevant planning application and condition(s) which you seek to discharge or seek approval for. Forms & guidance notes are available on the National Planning Portal website, <https://www.planningportal.co.uk/applications>

Non Material Amendments

There is an application form for the submission of Non Material Amendments to approved plans. Forms & guidance notes are available on the National Planning Portal website, <https://www.planningportal.co.uk/applications>

The fee chargeable is currently £234 per request, or £34 where the related permission was for extending or altering a dwelling house or other development in the curtilage of a dwelling house.

Appeals to the Secretary of State

If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.

If you want to appeal against your local planning authority's decision then you must do so within **6 months** of the date of this notice.

Appeals must be made on a form obtainable from the Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, BRISTOL, BS1 6PN, Telephone Number: 0303 444 5000, Email: enquiries@planninginspectorate.gov.uk or from the Planning Inspectorate website: <https://acp.planninginspectorate.gov.uk/>.

The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to him that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

In practice, the Secretary of State does not refuse to consider appeals solely because the local planning authority based their decision on a direction given by him.

As from 6 April 2010 if an enforcement notice has been served in the previous 2 years you will have only 28 days in which to lodge the appeal following the refusal. Equally, if an enforcement notice is served after the refusal it will truncate the period for lodging the appeal against the refusal of planning permission to 28 days after the enforcement notice has been served.

Purchase Notices

If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on the Council (District Council, London Borough Council or Common Council of the City of London) in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

