



Application for removal of condition 6 from the grant of consent in application 1/0317/2017/FUL.

The Shippen, Weirmarsh Farm, Umberleigh, Devon, EX37 9BE.
– on behalf of Ms H May.

INTRODUCTION

This application is made under the instruction of our client, Ms H May, and relates to the removal of condition 6 attached to the consent granted for application reference 1/0317/2017/FUL.

In granting the consent, the LPA applied 7 conditions. These were as follows;

1. The development to which this permission relates must be begun no later than the expiration of three years beginning with the date on which this permission is granted;

2. The development hereby permitted shall be carried out in accordance with the approved plans listed in the Plans Schedule;

3. Prior to their installation, details of all windows including cross sections, depth of reveal and finishes shall be submitted to and agreed in writing by the Local Planning Authority. The agreed details shall be implemented before the development hereby permitted is occupied and shall thereafter be retained as such;

4. The rooflights hereby permitted shall be flush fitting with the outside face of the roof;

5. Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 2015, (or any Order revoking and re-enacting that Order) no development of the types described in Part 1; of Schedule 2, other than that hereby permitted shall be carried out without the further grant of planning permission;

6. The accommodation hereby permitted shall be used solely as annexe accommodation ancillary to the existing dwelling known as Weirmarsh Farm; sharing the parking and external amenity space of that dwelling, and not as an independent dwelling;

7. Prior to the occupation of the development hereby permitted, full details of the method of accommodating all service meter boxes shall be submitted to and agreed in writing by the Local Planning Authority. The agreed details shall be implemented prior to the occupation of the development hereby permitted and shall thereafter be retained as such.

As can be seen, 6 of these conditions are either already discharged or still entirely acceptable to the applicant but one, number 6, is the subject of this application.

The detailed justification for the application is set out below and we trust the LPA will understand both its reasoning and conclusions in the context of an application such as this and in light of the guidance governing the use of conditions as set out below and the various changes to the planning system that have occurred since the previous consent was granted.

OVERVIEW

When we look at the condition on the extant consent which the application seeks to remove, we note that it relates to condition 6 which states "*The accommodation hereby permitted shall be used solely as annexe accommodation ancillary to the existing dwelling known as Weirmarsh Farm; sharing the parking and external amenity space of that dwelling, and not as an independent dwelling*".

We note that the reason for this condition is given "*as creation of a separate residential unit would be contrary to the policies of the development plan, policies DVT2c and be unsuited for unrestricted residential use given the potential for nuisance from the near agricultural buildings*".

The LPA will appreciate that the policy objections in terms of DVT2c would no longer stand as of course this policy no longer exists and has effectively been replaced by a policy which is now permissive of the reuse of such rural buildings for residential purposes. Furthermore, the concerns regarding the proximity of the agricultural buildings and their potential for nuisance were themselves expressed in terms of this being a reason that unrestricted residential use was not suitable.

What was notable, even before the subsequent change in planning policy, is the fact that the building is already in full time residential use and this was indeed permitted by the extant consent. However, there is no condition linking this main dwelling (and therefore the application building) to the farmstead itself and therefore the house may be owned and occupied by anyone with no connection whatsoever to the surrounding farm buildings, which are indeed entirely separately owned and operated.

In light of this, we trust the LPA will see that because there is no conditioned linkage between either dwelling and the farm buildings that are considered to create a potential for nuisance, the proximity of the farm buildings does not stand scrutiny as either a justification for the previous condition or an objection to it being lifted.

The current position is that the dwelling may already be occupied on a full-time residential basis by occupants who have no relationship whatsoever with the surrounding farm buildings and operations. Whether or not they have any relationship to the occupants of the main dwelling has no relevance in planning terms and does not affect the acceptability, under the current policy provisions, of the full time residential use of the building being by occupants with some hypothetical relationship to the occupants of the main dwelling.

Although the annexe is currently linked to the main farmhouse, there is no such link between the main farmhouse (and thus, by virtue of the condition, the annexe) and the farming operations potentially creating any nuisance. As a result of this, whoever lives in the annexe may be entirely unconnected to those operations as it is.

CONDITIONS

When conditions may be applied

The NPPG sets out the reasons behind the use of conditions;

“When used properly, conditions can enhance the quality of development and enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of the development”.

As we have seen above, there can be no adverse affect of this development as it was granted a consent for full-time residential use and that status would still be the same were the condition not to exist. For this reason and to further reemphasise this point paragraph 203 of the National Planning Policy Framework states; *“Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions”.*

There is no basis for the use of this condition as there is absolutely nothing unacceptable about this development and thus nothing required to make it acceptable. The full time residential use of the building was permitted in any case and nothing about that is changed by the imposition of the condition. If full time human habitation of this building is acceptable, as indeed the LPA have clearly been happy to confirm it was, then how could it matter which humans are in full-time habitation? Or whether or not they have some, fairly vague connection to the occupants of another nearby dwelling which has no occupancy conditions itself? And where neither have any operational link with the nearby farm?

The six tests for planning conditions

If we then look in detail at the requirements that conditions must meet (and meet all of) we find the imposition of the condition even more unjustified.

National planning guidance states 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 respects.

To confirm, the six tests must all be satisfied each time a decision to grant planning permission subject to conditions is made.

When these six tests are looked at, along with the key considerations provided in the NPPG, we find that arguably, rather than just the requisite threshold of one, every one of the six tests are failed.

Necessary - Will it be appropriate to refuse planning permission without the requirements imposed by the condition?

"A condition must not be imposed unless there is a definite planning reason for it, ie it is needed to make the development acceptable in planning terms."

In this case, we would question whether it was appropriate, as the development (to allow full time residential use) was clearly entirely acceptable. However, we do appreciate the policy context of the time, but whilst this was more restricted, it was actually largely based around economic reuse and yet here a residential consent was granted in any case. Notwithstanding all of this, within the new current policy context, the development meets the requirements of all relevant policy and can thus be supported. As such, a condition limiting who may occupy the building is no longer necessary. Especially when the condition does not create any occupational link in any case.

As a result, and in the terms set out by the NPPG, condition 6 will "fail the test of necessity."

Relevant to planning - Does the condition relate to planning objectives and is it within the scope of the permission to which it is to be attached?

This condition has no longer has any relevance to Planning objectives – these have already been met by the proposal itself. This condition simply restricts who may utilise the development and thus severely limits and restricts the Planning systems ability to deliver its (principle) planning objectives (sustainable development) for no clear or justifiable reason.

Relevant to the development to be allowed - Does the condition fairly and reasonably relate to the development to be permitted?

"It is not sufficient that a condition is related to planning objectives: it must also be justified by the nature or impact of the development permitted."

This condition has no relevance to the development to be allowed. It seeks purely to limit who may occupy the development. Such a restriction is clearly not relevant to the acceptability of the proposal itself.

As has been set out above, it is common ground that full-time residential occupation is acceptable and the current condition creates an irrelevant limitation on how that residential occupation may be undertaken. This condition therefore has no relevance to, or affect upon, the acceptability of the residential use, or its impact.

"A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development."

There is no 'pre-existing problem' or 'issue' created here by the proposed development. We submit there was one to begin with, but with certainty can

say that the removal of the condition wouldn't create any harm or even difference with that which is already allowed.

As a result this condition seeks to address an 'issue' that does not exist and is not created by the development.

Enforceable - Would it be practicably possible to enforce the condition?

Enforceability in this case is unclear and questionable. The consent granted allows full time residential occupation, but insists there must be some vague and unknowable connection between those occupying the building and what is described as the main dwelling nearby. Yet it is not a condition that sets out what the relationship must be and neither dwelling's occupants need to have any occupational tie to the site or any agricultural operations. As such, they can be people from anywhere, doing anything and who, when asked, simply need to say that they are somehow involved in an undefined relationship. As such, it is difficult to know how or what a breach would even look like, let alone how it could be enforced against.

Precise - Is the condition written in a way that makes it clear to the applicant and others what must be done to comply with it?

"Poorly worded conditions that do not clearly state what is required and when must not be used."

Condition 6 is imprecise. It states that it must be used ancillary to the existing dwelling nearby and share parking & external amenity space. There is no definition of what that parking and external amenity space is and different areas of it may obviously be used separately by each dwelling whilst still being theoretically shared. It is simply impossible to say how such a use might be considered shared or alternatively might be considered independently used. Two cars obviously cannot share the same parking space at the same time, so they park in independent spaces.

Similarly, the relationship between the occupants of the main dwelling and the occupants of the building subject of this application is nowhere defined, to the point where they could be complete strangers with one another and still not be in breach of this condition.

For the reasons set out above regarding enforceability it is also unclear what is caught by the condition and what is not. If the reasoning is examined it becomes all the more unclear and imprecise. Would appear unclear and that it may be the occupation of the dwelling or it may be the dwelling itself.

Further, when this reasoning is examined, it becomes clear that the condition does not achieve what it apparently sought to in any case. Ancillary remains unspecified and the perimeters of shared use remain opaque (see reasonableness below).

Reasonable in all other respects - Is the condition reasonable?

Condition 6 can be seen to be unreasonable for numerous reasons, including many of those set out above under the headings specific to the six tests and

also those instances set out below where (apart from failing any of the six tests) conditions should explicitly not be used.

We appreciate that the condition may have been lead previously by a more restrictive policy which did not, at the time, permit residential reuse of rural buildings such as this, but instead set out that they should be put to an economic reuse such as a holiday let. However, a residential use was permitted and perhaps in a form of very helpful work around. This was granted in a manner that described it as an annex to a nearby house, yet there was no definition of what that annex relationship would comprise of, meaning that in fact, anyone could live in the building, as long as it was with little more than the knowledge of whoever lived in the larger dwelling nearby.

Neither party were required to or indeed now have any involvement in the entirely separate farming enterprise, carried out on surrounding land, and there is no condition in relation to occupation or use. In light of this, we can see that the condition would no longer be relevant at all, given the changes to planning policy which now readily allow full independent residential use of rural buildings. As such, the condition becomes entirely without reason.

Having provided above the basis on which conditions may be applied in the first place and then numerous examples of how condition 6 fails to comply with the tests in relation to the fitness of conditions for purpose we would reiterate the following from the NPPG;

"Any proposed condition that fails to meet any of the six tests should not be used."

It is clear that, on this basis, condition 6 falls far short of this definitive, clear and categorical statement. Not only does condition 6 fail 1 of the tests and therefore cannot be used, we can in fact see that it fails all six.

LOCAL PLAN POLICY

Local Plan Policy DM27 relates to the reuse of redundant rural buildings. This policy allows for a residential reuse, subject to a set of criteria which in general relate to matters of character and appearance as well as the suitability of the subject building for any necessary physical works. As a result of the above, nowhere does this policy set out any requirement for conditions such as that we are seeking to remove here. Put simply, were this proposal before the LPA today, no such condition would be applied and therefore we can see in the current context such a condition is no longer justified.

As a result, where the condition previously applied was removed for the reasons set out regarding how it fails to meet the relevant test, there would be no policy basis on which any new condition would be required to replace it.

OTHER MATERIAL CONSIDERATIONS

Access.

The access is the same as was found to be acceptable previously and no change is proposed.

On this basis there are no transport sustainability or technical highways implications with this application.

Character & appearance.

There are no physical works or changes associated with the removal of this condition and therefore the development would remain as acceptable as it was when it was approved.

CONCLUSION

In summation we have set out that the condition is not necessary, not reasonable, not enforceable and it does not make acceptable a development which, without it, would not be. As such, we submit it should be removed. The condition doesn't create any specific definition of what it means by ancillary or what it means by shared use of amenity space, as that shared amenity space already has many different areas and elements which may be used, for all intents or purposes, independently anyway. Further, it would not even prevent separate ownership of the two properties, as the condition relating to use does not make separate titles.

Full-time residential use may already be made of the building and given that there would be no practical difference resulting from the removal of this condition, comprehensively confirms that the condition itself makes no practical difference by existing in the first place.

For these reasons, when considered in relation to national guidance regarding the imposition of conditions and also the now current policy landscape, we would ask that the LPA remove this condition and approve this application.

Appendix

- a) Location plan**
- b) Previous decision notice**
- c) Wildlife Trigger List**