

fluid planning

**The Wood Shed
Park Lane
TN15 0JS**

**S73 Planning Statement
0034**

1.0 Introduction

1.1 Planning permission 19/02020/FUL was granted by notice dated 15 November 2019. The description of development is:

Demolition of existing barn and erection of one 1-bed dwelling house.

1.2 The development is subject to pre-commencement planning conditions. The conditions listed below were discharged as explained:

- Condition 2 - External materials on 8 July 2021;
- Condition 8 - Electric charging for vehicles on 1st July 2021; and,
- Condition 14 - Surface water drainage on 29 July 2021.

1.3 The pre-commencement conditions were submitted 16 June 2021 for discharge and refused without discussion by the Council. Additional information is provided within this statement in respect of conditions 7 and 9 relating to visibility splays. The conditions are onerous and contradict earlier applications at the Site. Planning permission SE/18/0272/FUL was granted by notice dated 25 October 2018. Condition 9 states:

“9) No development shall commence on site until a visibility splay of 2m x 43m has been provided on each side of the access, the depth measured from the back of the footway (or verge) and the widths outwards from the edges of the access. No fence, wall or other obstruction to visibility above 0.9m in height above ground level shall be erected within the area of such splays.”

1.4 The visibility splays were implemented in accordance with this requirement and is clearly evident on Site. At the time, Planning Enforcement investigated the visibility splays and agreed that they were implemented.

1.5 Planning permission 19/02020/FUL includes two conditions relating to visibility splays affecting the same entrance within the red line to SE/18/0272/FUL. Oddly, despite the visibility splays being in existence, Condition 7 pursuant to 19/02020/FUL requires a landscaping scheme prior to implementation of the visibility splays. Condition 7 states:

“Prior to the implementation of any visibility splays details of the landscaping (trees) to be retained, removed, and replaced along the proposed visibility splays shall be submitted and approved in writing by the local planning authority. These details shall include: - Tree protection measures, - Replacement trees including species,

size, and a programme of implementation, - Root protection measures for retained trees. The works shall be carried out in accordance with the approved details.”

- 1.7 Condition cannot be discharged, because the visibility splays are already there on Site. Condition 7 represents a visual improvement to the splay, but without any highway safety benefit and is completely unreasonable. Condition 9 then states:

“No development shall be carried out above damp proof course level of the hereby approved dwelling and extension until a visibility splay of 2m x 43m has been provided on each side of the access, the depth measured from the back of the footway (or verge) and the widths outwards from the edges of the access. No fence, wall or other obstruction to visibility above 0.9m in height above ground level shall be erected within the area of such splays.”

- 1.8 With condition 9, again, the visibility splay is on Site and in use. Condition 9 was complied with but lacks any control over maintaining the splays.

- 1.9 This section 73 application to vary and remove the conditions proposes that condition 7 is removed entirely. Then condition 9 is reworded to ensure the visibility splays are retained for the life of the development. The proposed wording is:

“The dwelling shall not be occupied unless a visibility splay of 2m x 43m has been provided and maintained on each side of the access, the depth measured from the back of the footway (or verge) and the widths outwards from the edges of the access. No fence, wall or other obstruction to visibility above 0.9m in height above ground level shall be erected within the area of such splays.”

- 1.10 Paragraph 55 of the Framework is clear the Council should only consider conditions where otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Here the access is already safe and controlled by condition pursuant to permission reference 18/0272/FUL that required implementation and maintenance of the visibility splays. National Planning Practice Guidance details the six tests each condition must satisfy. Rewording of Condition 9 as proposed at paragraph 1.9 to the statement is policy compliant. Condition 7 in particular, was not and is no longer (1) necessary, (4) enforceable and (6) reasonable in all other respects.

