

Ms J Russell
Planning Department
Swale Borough Council
Swale House
East Street
SITTINGBOURNE
ME10 3HT

Our ref: CC/18071

26th September 2023

Dear Ms Russell

**Section 73 application to vary condition 29 of planning permission ref: 22/501787/FUL
(Section 73 - Application for minor material amendment to condition 2 pursuant to 20/503666/FULL for construction of a new crematorium, associated car park, access road and gardens of remembrance (as amended by 21/506633/NMAMD and 22/505282/NMAMD) Variation sought: Extension of the building to the south to increase the size of the crematory; extension to the yard; alterations to the toilet block to reduce size and to change its location on site; introduction of electrical substation and associated access, as well as the introduction of an electrical switch cabinet structure)
on land adjoining Faversham Showground, Staple Street, Hernhill, Kent ME13 9HY**

Please find enclosed completed application forms in connection with an application under S73 of the T&CPA 1990 seeking the variation of condition 29 of the planning permission 22/501787/FUL, dated 12th May 2023, in connection with the above development.

Condition 29:

'The crematorium hereby approved shall be constructed to BREEAM 'Very Good' Standard or an equivalent standard and prior to the use of the building commencing the relevant certification shall be submitted to the Local Planning Authority confirming that the required standard has been achieved. The details provided shall include those set out in the email from the agent dated 7th January 2021 and shall include the provision of an Electric Cremator.

Reason: In the interest of promoting energy efficiency and sustainable development.'

This condition requires the submission of a BREEAM certificate to the LPA prior to the use of the building and this is overly restrictive as the BREEAM assessment process is an ongoing one and a certificate cannot be issued until the development is complete and the premises have become operational. It is for the independent Assessor to determine whether the required standard has been met and not the Local Planning Authority, although the LPA's confirmation of the same can be sought by condition. As drafted the condition is not deemed to be "reasonable in all other respects" and fails to meet the prescribed tests.

Attached is an appeal decision wherein an Inspector has set out appropriate wording for a BREEAM condition. In appeal APP/E5900/W/17/3171437 the Inspector worded the condition to the effect that the development will achieve the required standard and that “...*within 6 months of occupation of the assessed unit a final BREEAM certificate shall be submitted for approval...*”. The requirement to demonstrate the BREEAM standard has been met is post-occupation of the development, rather than prior to the use of the building as condition 29 sets out.

Accordingly, as drafted the condition is overly restrictive and prevents the proper implementation of the approved scheme.

Conditions are imposed on planning permissions to enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects. Conditions must be tailored to tackle specific problems, rather than standardized or used to impose broad unnecessary controls.

Section 70(1)(a) of the Town and Country Planning Act 1990 enables the local planning authority, in granting planning permission, to impose ‘such conditions as they think fit’.

Paragraph 55 of the National Planning Policy Framework, however, makes it clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

- 1. Necessary;**
- 2. Relevant to planning;**
- 3. Relevant to the development to be permitted;**
- 4. Enforceable;**
- 5. Precise; and**
- 6. Reasonable in all other respects.**

Each of the above six tests need to be satisfied for each condition which an authority intends to apply. Rigorous application of the six tests can reduce the need for conditions, which should be kept to a minimum where possible.

Any proposed condition which fails to meet one of the six tests should not be used.

It is requested that condition 29 be varied to read as follows:

“The crematorium hereby approved shall be constructed to BREEAM ‘Very Good’ Standard or an equivalent standard. Within 6 months of the occupation of the building hereby approved a certificate following a post-construction review of the building shall be issued to the local planning authority by a BREEAM Licensed Assessor to show that the building has achieved ‘Very Good’ BREEAM rating (or any such equivalent rating as may supersede BREEAM as a national measure of the sustainability of a building design).”

REASON: In the interests of sustainability and to minimise the impact of the development on the effects of climate change.”

Such a wording would enable the development to proceed through to occupation, without unnecessarily delaying the operation of the building given that the BREEAM rating process is an ongoing one through the development, construction and operational phase.

We trust the above is acceptable and look forward to receiving approval of the amended condition in due course.

Yours sincerely
for Genesis Town Planning Ltd



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