21 Southernhay West, Exeter, Devon, EX1 1PR
planning@stags.co.uk | 01392 439046 | stags.co.uk

Ref: AS/SA

3rd April 2024

Planning Department
Beaulieu Road,
Lyndhurst,
Hampshire
SO43 7PA

APPLICATION FOR REMOVAL OF CONDITION (2) ATTACHED TO PLANNING PERMISSION 06/88791

We are writing to submit an application for the removal/variation of condition (2) attached to planning permission 06/88791. This application is submitted under Section 73 of the Town and Country Planning Act 1990.

The following information accompanies this submission:

- Site Location Plan/Block Plan 06/88791
- Statutory Declaration of Sally-Anne Pierson
- Planning and Legal Opinion – D Corsellis (LLb) - Planning Consultant (Solicitor non-practising)

No biodiversity survey is submitted with the application as these proposals relate to an existing developed consent and the proposals will not result in any physical changes.

In September 2006 Moortown Farms Limited (the Applicant) applied to the Council (the Application) for *"Change of use for equestrian business use; stable block/tack room; manege"* (the Development).

The Application was dealt with by the Council under reference 06/88791 and the Council granted planning permission (the Permission) on 21 November 2006 for the Development.

Condition 02 of the Permission (the Condition) states : - "The site shall only be used for the training and exercising of horses and their stabling whilst training, by the applicant, and/or for personal equestrian use and keeping horses owned by the applicant and at no time shall the site be used for any other equestrian business use, including that of livery or as a riding school without the prior written consent of the Local Planning Authority."

All planning conditions need to meet six tests. The tests are (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 (the Tests).

Even leaving to one side the unacceptable inclusion of the words "without the prior written consent" etc., the Condition fails four of the six tests. That said, each of the Tests needs to be satisfied and if any of any of the Tests is not met a planning condition should not be applied and must, as in this case, be

varied or removed. Put simply, the Condition does not meet one or more of the Tests and must be varied or removed by the grant of a fresh permission.

The Application is made on a without prejudice basis, i.e. it is made without prejudice to a separate application made by the Applicant for a certificate to confirm the Condition can no longer be enforced by the Council because it has been breached continuously for more than 10 years and is being breached today.

The Application is also made in the context of a further separate application made by the Applicant for a certificate to confirm that land outside the land authorised for the change of use by the Permission has been used continuously for more than 10 years for the keeping of horses and is being used today for the keeping of horses.

The obvious point coming from the two separate applications referred to above is that (1) the variation of the Condition is irrelevant if the Condition has been breached continuously for more than 10 years etc., and (2) the Condition cannot control development on land outside that authorised for the Development.

The Condition's clear failure to comply with one or more the Tests becomes more obvious when the Condition is read in conjunction with the stated reason for its imposition. This states:- "Reason: The use of the manege on a commercial basis could potentially increase vehicular movements in the area to an unacceptable level that would cause harm to local amenity and highway safety, and this would be contrary to Policies DW-E1 and DW-T8 of the New Forest District Local Plan First Alteration."

What is wrong with the Condition can be looked at on a several levels. These might be summarised as:

What evidence was there when the Condition was imposed that the number of vehicle movements associated with the authorised use might significantly increase vehicular movements? There was no evidence. The Condition was neither, therefore, "necessary' nor "reasonable in all other respects" and one or more of the Tests is not met.

What account, if any, building on 1. above was taken by the Council of the vehicle movements associated with, or potentially associate with, the immediately adjoining commercial uses? In 2006, and certainly today, the adjoining commercial uses are extensive and include more than one vehicle operating centre. As above, therefore, seen in the context of the actual and potential vehicle movements associated with the adjoining lawful commercial uses, the Condition is neither "necessary" nor "reasonable in all other respects" and one or more of the Tests is not met.

No logical or reasonable distinction can be drawn between the "training and exercising of horses" and giving "riding " lessons. The training and exercising of a horse can, and does, involve training both the horse and the rider. If there is meant to be some distinction the Condition is not "precise". If there is no logical or reasonable distinction, then the Condition is neither "necessary" nor "reasonable in all other respects". Either way one or more of the Tests is not met.

The Condition refers to the training and exercising of horses and their stabling whilst training, "by the applicant". The "applicant" is Moortown Farms Limited, i.e. a company. Whilst it was wrong, having regard to the relevant guidance, to have made the Permission a personal consent, the fact the Permission is made personal to a company means the Condition is neither "precise" nor "reasonable in all other respects". To be clear, "by the applicant" must include and allow, even assuming the "training and exercising" is organised and run "by the applicant" the "training and exercising of horses" by anyone employed by the "applicant", i.e. by the company. The "applicant" could, if it so wished, employ several people as trainers etc., and thereby significantly increase the level of activity at the stables by having horses come for training and exercise daily. The Condition therefore is not "precise" nor "reasonable in all other respects" and one or more of the Tests is not

met. As an aside the "applicant" has not been involved with the "training and exercising" of horses; hence the Application being made on a without prejudice alternative basis.

No logical or reasonable distinction can be drawn between stabling horses there for "training and exercising" and commercial livery, i.e. where a horse is fed, mucked-out and generally cared for "by the applicant". The reason why the horse is in the stable, i.e. whether it is there for "training and exercising" or just being looked after when the owner might be away on holiday for two weeks is entirely irrelevant. Whilst given the immediately adjoining commercial uses no argument based on potential vehicle movements could ever succeed even if the livery proposed was DIY livery, the vehicle movement argument cannot be made to argue that commercial livery is somehow unacceptable, especially when the Condition, whilst referring to some form of split between "personal equestrian" and other equestrian does not confirm what that split must be. To the extent, therefore, the Condition tries to control the type of "equestrian business", or tries to make the Permission personal, it is not "necessary", not "precise" and not "reasonable in all other respects". Indeed, the Condition also fails the test of being "enforceable". For a further reason, therefore, the Condition fails one or more of the Tests and must be either varied or removed.

The Application, albeit made on a without prejudice basis, is directed first at the removal of the Condition because the Applicant considers any planning condition would fail one or more of the Tests because any restriction on equestrian activities taking place is not "necessary". Indeed, that is the position before it is remembered (1) the Condition does not apply to land outside the land authorised by the Permission and (2) the level of activity associated with the adjoining lawful commercial uses. If the Council agree with that assessment the Condition should be removed in its entirety and a fresh permission issued without the Condition, in varied form, imposed. However, if the Council thought it could somehow distinguish DIY livery, i.e. livery where responsibility on a daily basis for feeding, mucking-out and generally caring for the horse was the responsibility of the horse owner, as opposed to "the applicant", the applicant would suggest and accept, whilst deleting the words "by the applicant", the Condition be varied to read :- "The site shall not be used for DIY livery, that is for the stabling of horses or ponies where it is the owner of the horse or pony that has responsibility for feeding, mucking-out and generally caring for the animal on a daily basis." Reason: DIY livery has the potential to bring a greater level of noise and activity to the site." Whether the Council can further justify the imposition of a condition to prevent DIY livery by reference to specific planning policies, is a matter for the Council.

Yours sincerely

[redacted]

Alister Smith BSc (Hons) PGDip MRICS
Professional Partner
Professional Services
a.smith@stags.co.uk
01392 439046