



30th April 2024

Planning Services  
Guildford Borough Council  
Guildford  
GU3 4BB

**The Folly, Backside Common, Guildford, GU3 3EB**  
**Erection of replacement dwelling**

**Section 73 of the Town and Country Planning Act 1990**  
**Minor Material Amendment for the Removal of Condition 7 and Condition 10 of planning permission 23/P/00793**

This application, under Section 73 of the Town and Country Planning Act 1990, is for the removal of Condition 7 and Condition 10 of planning permission 23/P/00793, approved 6<sup>th</sup> February 2024 by Guildford Borough Council.

The removal of Condition 7 and Condition 10 are minor in nature and therefore can be dealt with by way of Section 73 of the Town and Country Planning Act 1990. This has been confirmed by James Amos, GBC planning officer via email, 8th Feb 2024.

Planning permission 23/P/00793 contains 12 conditions. Paragraph 56 of the National Planning Policy Framework makes 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
6. reasonable in all other respects

### **Condition 7:**

*Prior to first occupation of the dwelling hereby approved, the existing out buildings (or their remnants as applicable) as identified on Site Block Plan (GM 2023 TF SBP001) received 10/05/2023 shall be demolished, including the removal of its foundations. The demolition of the existing buildings and the removal of the resultant materials (where they are not to be used in the construction of the development hereby approved) must be completed in its entirety pursuant to this permission.*

*Reason: To secure a satisfactory development and in the interests of the openness and amenity of the Green Belt.*

This S73 application proposes that Condition 7 should be removed in its entirety from the planning permission approved under 23/P/00793. Condition 7 does not comply with paragraph 56 (NPPF): The development is to rebuild the existing dwelling. It will be the same size and location as the original dwelling that was destroyed by fire. This accords with the paragraph 154,d (NPPF) and Local Plan. It is not **necessary** or **reasonable** to arbitrarily consider an additional Very Special Circumstance to support the development. This is especially pertinent when the planning letter specifically stated "*the development does\_not\_involve any existing built form to be demolished.*" The development is acceptable without imposing Condition 7 and therefore it should be removed.

The Officer's Report in the granted application mistakenly assumed that the planning application included the removal of existing built form. The planning letter in the application, 23/P/00793, clearly stated "*The development does **not** involve any existing built form to be demolished.*"

The planning officer incorrectly stated in the Officer's Report "*The application is similar to that which was permitted in 2022 and comprises the demolition of surviving outbuildings and the construction of a dwelling on the footprint of the dwelling previously on the site*". This statement is factually incorrect and the officer should not have made this assumption as confirmed by the planning officer via email, 8th Feb 2024. No weight should be given to this statement in the Officer's Report. The application does not involve any existing built form to be demolished. It is to replace the existing dwelling destroyed by fire. The dwelling is the same size and location as the destroyed property. The development complies with paragraph 154,d (NPPF) and does not require any additional existing built form to be removed.

Condition 7 also refers to a plan from a different past planning application that is not **relevant**.

## **Condition 10:**

*Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting or amending those Orders with or without modification), no development within Part 1, Class E shall be carried out within the curtilage of the dwellinghouse.*

*Reason: To control the development in the interests of protecting the Green Belt and its openness.*

Paragraph 54 of the NPPF states "planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so". Paragraph 56 states that "planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects".

The planning permission is to replace a dwelling destroyed by fire. It is the same size and position as the original building. Had the house not been destroyed by fire it would have had the benefits of full permitted development rights. Therefore, it is not **necessary** or **reasonable** to remove the rights just because the house was destroyed by arson.

Notwithstanding the above, the NPPF and the National Planning Practice Guidance (NPPG) offer clear guidance on the use of planning conditions.

The NPPF states

*55. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should **only** be used where it is not possible to address unacceptable impacts through a planning condition.*

*56. Planning conditions should be kept to a minimum and **only** imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects...*

The NPPG states:

*Is it appropriate to use conditions to restrict the future use of permitted development rights or changes of use?*

*Conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country*

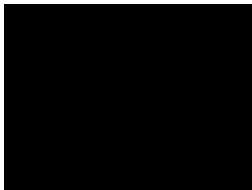
*Planning (General Permitted Development) (England) Order 2015, so that it is clear exactly which rights have been limited or withdrawn. Area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.*

Permitted Development rights are designed to allow for the planning constraints which are relevant to the site. For example, Permitted Development rights are reduced in Areas of Outstanding Natural Beauty and Conservation Areas, but **not** in the Green Belt as is the case here.

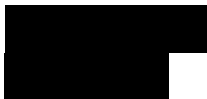
The recent appeal allowed for the re-instatement of permitted development rights at Pilgrims Cottage, Sandy Lane, Guildford (ref APP/ Y3615/W/22/3290698) clearly sets out that the removal of permitted development rights in the Green Belt fails the relevant tests. The Green Belt is not an exceptional circumstance which would justify its imposition.

For the reasons above I would be grateful if you could remove both Condition 7 and Condition 10 of planning permission 23/P/00793.

Yours sincerely,



**Giles Maltby** MA MRTPI



Appendix 1: - Decision Notice for planning permission 23/P/00793

Appendix 1: - Officer report for planning permission 23/P/00793

Appendix 2: - Appeal decision APP/ Y3615/W/22/3290698