

Our Ref: MJT/GMW/AP113-14

28th October 2014

Barnsley MBC.,
Planning Services,
PO Box 604,
Barnsley,
S70 9FE.

Dear Sir / Madam,

**RE: SECTION 73 APPLICATION FOR VARIATION OF PLANNING CONDITION (NO 3) – APPROVAL
“DEMOLISH EXISTING BUILDING AND REPLACE WITH A NEW DWELLING” – APPLICATION
NO 2014/0454, SCOUT DIKE RESERVOIR, HUDDERSFIELD ROAD, PENISTONE, SHEFFIELD,
S36 7EZ – MR ROY HARRISON**

Please find attached the abovementioned application which has Planning Portal reference 03760327. I confirm that a cheque for the requisite planning fee has been forwarded in the post.

Prior to the submission of this application the matter has been discussed with the Council's Planning Officer, Mr M Smith.

Specifically this application seeks the variation of Condition No 3 attached to the planning permission which states:-

“The occupation of the site hereby permitted shall be carried out only by Mr Roy Harrison (the applicant) and his resident dependent.”

The stated reason for the condition is:-

“The site is not in an area intended for general development as this would be contrary to the Core Strategy Policy CSP34 “Protection of Green Belt”. Permission is granted solely on the basis of the bespoke / innovative nature of the proposal.”

Continued ...

In support of this application for the variation of the condition, I would comment as follows:-

- (i) The applicant is fully aware of the bespoke nature of the proposal that he has put forward. He fully accepts that any planning permission will be subject to conditions and require him to carry out the development in strict accordance with the approved scheme.
- (ii) It would be noted, however, that the subject condition restricts the “occupation” of the property (not the nature of the development) to the applicant and his “resident dependents” in perpetuity, and therefore after the passing of the applicant and his resident dependents permission would no longer be in place for the use. The question would be raised, therefore, with the implications of the condition are that the development would then be unlawful if it was occupied by any other person and, therefore, would have a nil use?
- (iii) It is noted that the reference to in the reason for granting permission states that this is solely on the basis of bespoke and innovation nature of the proposal. Clearly planning permission has been granted because the Council and Officers considered that the proposal conformed with Green Belt Policy. However, even if as the reason states **“permission is granted solely based upon the bespoke / innovative nature of the proposal”** that does not in any way justify the restriction on the occupancy which has no relevance to the nature of the scheme that has been approved and how this is carried out.
- (iv) It is considered that in determining this Section 73 Application for the variation of the subject planning condition that it is incumbent upon the Council to consider the proposal in the light of recently published relevant government guidance on such issues (“Planning Practice Guidance – Use of Planning Conditions”). It is considered that by reference to this guidance and as will be outlined below, there is no justification whatsoever to retain the subject condition.

The advice states with regard to why conditions are imposed on a planning permission:-

“The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable. It is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls.”

It is considered for the reason set out in this submission the condition is not fair, reasonable or practicable.

Section 2 outlines the application of the six tests set out in the National Planning Policy Framework. At Section 206 of the NPPF, it sets out that Planning Conditions should only be imposed where they are:-

Continued ...

- ***“necessary;***
- ***relevant to planning; and***
- ***to the development to be permitted;***
- ***enforceable;***
- ***precise and;***
- ***reasonable in all other respects.”***

The advice goes on to outline:-

“How the local planning authority ensure that the six tests in paragraph 206 of the NPPF has been met.”

It goes on to advise when it is appropriate for a local planning authority to impose a condition on a grant of planning permission will depend on the specifics of the case and states:-

“The six tests must all be satisfied each time a decision to grant planning permission subject to conditions is made”

It then goes on to outline in more detail the six tests which are considered in the context of the subject condition, as follows:-

1. **“Necessary”**

This test set out:

“Will it be appropriate to refuse planning permission without the requirement imposed by the condition?”

- ***A condition must not be imposed unless there is a definite planning reason for it, i.e. it is needed to make the development acceptable in planning terms.”***

It is considered that the subject condition is not ‘necessary’ in ensuring that the development is carried out in the manner approved.

2. **“Relevant to the development to be permitted – does the condition fairly and reasonably relate to the development to be permitted.”**

The advice goes on to state:-

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

Continued ...

The occupancy of this property cannot be justified in terms of the impact of the development permitted.

3. ***"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."***

The advice goes on to state:

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

The question has to be raised as to whether the condition was properly thought through given that the implications of the condition are that the property would be constructed in accordance with the approved scheme and subject to the other conditions imposed. However, after the passing of the applicant and any resident dependent, the property could not be occupied. It is not clear how this relates to planning issues as clearly the building would still exist but could not be occupied. It is not clear what this would achieve.

4. ***"Reasonable in all other aspects"***

The advice states:-

"Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness."

Clearly, the occupancy restriction would place unjustifiable burdens on the applicant and would not in any way be reasonable.

Section 3 of the advice goes on to outline:-

"What approach should be undertaken to imposing planning conditions."

The advice states that:

"Any proposed condition that fails to meet any of the six tests should not be used. This applies even if the applicant suggests it and agreed on its terms, where it is suggested by members of a planning committee or a third party." (TPC underlining)

The advice then goes on to outline circumstances where conditions should not be used and these include:-

Continued...

“Conditions which unreasonably impact on the deliverability of a development.”

The advice set out that conditions which place unjustifiable and disproportionate financial burdens on an applicant will fail the test of reasonableness.

I attach a copy of a response received from the applicant's Building Society to this application to raise funds for the development. You will note that this states with regard to the occupancy condition:-

***“I can confirm in this email as discussed in our conversation that the Leeds Building Society does not lend on properties where any occupancy restrictions or sales restrictions would be in place as this prevents the property from being readily saleable which forms a major part of our lending criteria.*”**

Your specific example where you and Mrs Harrison will be the only eligible occupiers would definitively prevent us from securing a loan on the property in question.”

Quite clearly, no lender would lend on a property which clearly in respect of the constraints of the condition would essentially have a nil value once the applicant and occupant has passed. It will be noted that in terms of the issue of deliverability and viability, the NPPF states at para 173 that development must:-

“Provide competitive return to a willing land owner and willing developers to enable the development to be deliverable.”

This proposal is for a bespoke designed passivhaus. Conditions have been imposed to ensure that the development is carried out in strict accordance with the approved scheme. It cannot be a reasonable stance to take that only the occupant and his resident dependent could then occupy such development. The development proposed has been deemed to be acceptable in planning terms on its own merits and the occupancy restriction provided by the condition is unduly restrictive and would not serve any planning purpose.

Summary

It is considered that in the light of all evidence that the condition imposed should be revised. Government guidelines are clear that conditions should not be imposed unless they pass all of the six tests set out in the NPPF.

It has been clearly demonstrated that the imposed condition fails these tests as follows:-

Continued ...

- (i) Necessary;
- (ii) Relevant to the development permitted;
- (iii) Precise; and
- (iv) Reasonable in all other respects.

On these grounds alone the condition should be removed.

It is accepted that the Council require the development to be carried out in the way that it has been approved and have imposed conditions to ensure that this is the case. It cannot, however, be a justifiable situation where the imposition of the condition means that only the applicant could then occupy the property. It can also not be the case that a condition can be imposed which essentially would mean that following the passing of the applicant and his dependent resident the building could not be occupied. The property would exist and its non occupation would not serve any planning purpose.

It is also clear that no one would ever invest in a project which would essentially in the longer term be rendered worthless by the condition.

There is clearly no justification for the retention of this condition and there is clearly a case for variation of the condition. However, as discussed between the Planning Officer and applicant, in the interests of goodwill he is prepared to accept a limited time permission which would overcome the longer term issues the current condition raises. The applicant suggests as set out and agreed before the determination of the application that the following form of wording:-

“The occupation of the site hereby permitted shall be carried on only by Mr Roy Harrison and his resident dependents for a minimum period of five years.”

If any matters are raised, please do not hesitate to contact me. In any event, I would be grateful if you would contact me prior to drafting up your recommendation for determination.

Yours faithfully,

Michael Townsend BA (Hons) MRTPI
Chartered Town Planner

Encs