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Our Ref: MJT/GMW/AP117-14

25th November 2014

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



Dear Sir / Madam,

RE: FORMAL SUBMISSION FOR VARIATION OF SECTION 106 AGREEMENT – ALDHAM MILL FARM, BARNSLEY ROAD, WOMBWELL – RESUBMISSION OF APPLICATION 2014/0652 - MR M SMEATON

Please find enclosed the abovementioned application. This letter constitutes a formal submission for the variation of the Section 106 Agreement in respect of the subject property known as Aldham Mill Farm, Barnsley Road, Wombwell.

It will be noted that this is a resubmission of the previous application 2014/0652 which was withdrawn following issues raised by the Council's highways officer. At that stage the highway officer was not prepared to agree to the variation of the Section 106 Agreement without physical changes to the access to the site, which could not be dealt with through the subject application. This application is now submitted alongside an application to vary the vehicular access to the site (application no 2014/1263). It will be noted that the unilateral undertaking submitted with this application will be further updated on registration of this application.

The application is supported by the following information:-

(i) A copy of planning permission B/021/594/WW;
(ii) Copy of the Section 106 Agreement;
(iii) Copy of the Officer's report in relation to the planning application;
(iv) Highways Statement;
(v) Draft revised Section 106 submitted in Unilateral form; and
(vi) Copies of the application for the revised access (application no 2014/1263).

In support of the application and to provide the Council with full details, I would comment as follows:-

(i) The subject site forms a longstanding equestrian facility.

It is understood that in terms of the subject planning approval (B/021594), this sought to replace an external manage with an indoor arena and was

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described as "Erection of indoor riding centre" which was granted planning permission by the Council on the 19th February 2004. It will be noted that no conditions were attached to restrict the type of equestrian activity. It will also be noted that Condition No 7 stated:-

"The use hereby permitted shall be carried out between the hours of 9.00am to 8.00pm Mondays to Fridays and 0.00am to 5.00pm on Saturdays and Sundays".

It is clear from examination of the Council's file that at that stage there were lengthy discussions with regard to the use of the site and what type of equestrian facilities were proposed. It is understood that planning permission was then subsequently granted subject to the applicant entering into the Section 106 legal agreement.

It is also understood that the legal agreement was completed on the same date as the planning permission issued, i.e. 19th February 2004.

'Second Schedule' 1.(i) it states:
Cease use of the existing outdoor riding ménage which for identification purposes is shown edged pink on Plan 2 for any commercial business or other related purposes save and except for use for purposes of dressage events only PROVIDED such dressage events are limited to not more than two Sundays per calendar month."

It is noted that notwithstanding that the planning permission was for an unrestricted equestrian use which could be used on a daily basis, the legal agreement limited the use as set out above. The question must be raised as to how such a restriction, which conflicted with the planning approval, could be justified. It is considered that the restrictions were wholly unreasonable and on that basis should be amended as per the submitted draft Section 106 Agreement.

(ii) Whilst the site owner has operated the site in line with the requirements of the legal agreement, this is now causing difficulties in terms of the functioning of the site and, therefore, permission is sought to vary the two parts of the legal agreement which severely restrict the use as follows:-

(a) The agreement specifies that the type of equestrian event is for "dressage events only"; and
(b) Such dressage events can only be held on Sundays and limited to no more than two Sundays per calendar month.

A detailed highways statement is submitted with this application.

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(iii) From discussions with the Council's Planning Officer, it is understood that the restrictions were imposed at the request of the Council's Highways Officer. It is considered, however, that the restrictions are unduly restrictive, are not based upon justifiable highway grounds and fly in the face of the planning permission granted at the same time. It is considered that:-

(a) If the use is deemed acceptable in highway terms for two Sundays in every month, there is no reason why it cannot be used on any weekend; and
(b) There is nothing particular about dressage events that would generate more traffic than other equestrian uses. Therefore, variation is sought as submitted.

(iv) In terms of previous government advice, Circular 11/95 deals with planning obligations and at para 12 it states:-

"It may be possible to overcome a planning objection to a development proposal equally well by imposing a condition on the planning permission or by entering into a planning obligation under Section 106 of the Act. The Secretary of State considered that in such cases the Local Planning Authority should impose a condition rather than seek to deal with the matter by means of a planning obligation. This is because the imposition of restrictions by means of a planning obligation deprives the developer of the opportunity of seeking to have the restriction varied or removed by an application or appeal under part 3 of the Act if they are or become inappropriate or too onerous."

It is considered that the question must be raised as to why the conditions attached to the permission are wholly at odds with the legal agreement. The advice goes on to state:-

"It should be noted, however, that Section 106A of the act allows the developer to apply to the Local Planning Authority to discharge all modified planning obligations after the expiry of five years after the obligation is entered into."

Clearly five years has now passed and, therefore, it is appropriate to variation at this stage.

(v) In terms of up-to-date government guidance, the National Planning Policy Framework also addresses the issue of planning obligations. At para 203 it states:-

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"Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition."

Para 204 goes on to state:-

"Planning obligations should only be sought where all of the following tests:-

- ***Necessary to make the development acceptable in planning terms;***
- ***Directly related to the development; and***
- ***Fairly and reasonably related to the scale and kind to the development."***

It is clear that the legal agreement is neither necessary, fairly or reasonably related to the scale of development.

Para 205 goes on to state:-

"Where obligations are being sought <u>or revised</u> local planning authorities should take account of changes in market conditions over time."

In the Council determining this application, it is considered that it is incumbent upon them to judge the proposal in the context of the advice set out in S38(6). Whilst it may be accepted by the applicant that a S106 is required to address the issues, it is considered that the proposal put forward in front of the Council is acceptable. It will allow the applicant to proceed without the unreasonable constraints.

In terms of the recently published Planning Practice Guidance 'Planning Obligations', it states:-

"Planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. Where there is no agreement to voluntary negotiation, and the planning obligation predates April 2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it "no longer serves a useful purpose" or would continue to serve a useful purpose in a modified way (see Section 106a of the Town and Country Planning Act 1990".

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In summary, the S106 was imposed to control the use of the site following issues raised by the Council's Highways Officer. It is considered that the agreement is unduly restrictive by:-

(a) Limiting the use of the site to one form of equestrian facility; and
(b) Limiting the use to two Sundays a month.

It is quite clear that there is nothing particular about the type of equestrian use identified in the agreement that would make that generate any different traffic to any other equestrian event. There is no justification in highways terms for Sundays in the month. If it is accepted for two Sundays, then it is surely suitable for any Sunday. As outlined in the Highways Report by PAH Consulting with reference to traffic movements and visibility etc, an unencumbered weekend use would not give rise to harm in terms of highway issues. It is, therefore, considered that the Council should accept the details of the revised S106, which will be finalised once confirmation is received from the Council that the proposal is acceptable. Notwithstanding this position, the applicant has agreed as part of the submission to alter the access arrangements to the site, which are detailed in the accompanying planning application for variation to the access submitted by PAH Highway Consultants. The Section 106 Unilateral Undertaking will be updated to take these arrangements into account once the Council's highways officer confirms the acceptability of that scheme.

Should you require any further information or any matters arise, please do not hesitate to contact me. In any event, I would be grateful if you would contact me prior to preparing your recommendation for determination.

Yours faithfully,

[redacted]

Michael Townsend BA (Hons) MRTPI
Chartered Town Planner

Encs