

MEMBERS' UPDATE
Planning Committee –24 June 2015

Site Address: Land adjacent to Highfield Park, Eversley Road
Application No: F/2014/2032, Pages 11-30

This application is not retrospective, although there are caravans/mobile homes on site as the site has an authorised use as a gypsy and traveller site.

Points of clarification:-

- The guidance used to produce the 2015 GTAA is the Gypsy and Traveller Accommodation needs assessment: Guidance 2007
- The 2015 GTAA sets out the need to provide a total of 52 pitches between 2014 and 2029. As set out in the report, the figure is broken down to numbers needed in specific time periods; hence 21 pitches needed between 2014-2019
- The four pitches approved in principle subject to the completion of Sec106/Sec 111 agreements will only count towards meeting need when the legal agreements are completed and the decision notices issued
- The need figure between 2014-2019 consists of 6 pitches from current need (concealed households found during the survey work) and 15 pitches from future need
- There is non GRT occupancy on the Highfield Park site; however the original consent did not restrict occupancy to gypsies and travellers and the council is not in a position to enforce occupancy. The current proposal allows the opportunity to include a condition to restrict occupancy.

Changes to conditions shown in italics and bold:-

Condition 3

There shall be no more than 13 permanent gypsy and traveller pitches in total on the site which shall be provided as shown on the submitted plan. On each of the 13 permanent pitches hereby approved no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed at any time, of which only one caravan on each pitch shall be a static caravan or mobile home ***in use for residential occupancy at any one time.***

Condition 4

The proposed mobile homes, utility/day rooms and touring caravans shall be sited in accordance with plan no.2417/2. Any material change to the position of a mobile home, or its replacement by another mobile home in a different location ***or residential occupancy of more than one static caravan or mobile home on each pitch at any one time*** shall only take place following the written agreement of the council.

Condition 7

No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site and no commercial activities shall take place on the land, including the external storage of materials ***or the burning of waste or any other materials.***

Paragraph 31 should just read:
There is no CIL requirement in this particular case.

Site Address: Land adjacent to Highfield Park, Eversley Road
Application No: F/2012/0276, Pages 31-53

This is a retrospective planning application.

There is a reference in paragraph 22 (page 46) to a contribution towards children's play space – this contribution is no longer sought.

The 7 letters of objection identified on Page 40 were received in respect of the original application for the GRT pitches.

Changes to conditions shown in italics and bold:-

As this is a retrospective application and development has been carried out, condition 1 is no longer necessary.

Condition 3

There shall be no more than 8 permanent gypsy and traveller pitches in total on the site in the area shown as Plots 1-8 which shall be provided as shown on the submitted plan 11_427_003 Rev A. On each of the permanent 8 pitches hereby approved no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed at any time, of which only one caravan on each pitch shall be a static caravan or mobile home ***for use for residential occupancy at any one time.***

Condition 4

The proposed mobile homes, utility/day rooms and touring caravans on the area of land shown as Plots 1-8 on the submitted plan 11_427_003 Rev A, shall be provided and sited in accordance with plan no 11_427_003 Rev A. The proposed utility/day rooms shall be constructed on site prior to occupation of the pitches. Any material change to the position of a mobile home, or its replacement by another mobile home in a different location ***or residential occupancy of more than one static caravan or mobile home on each pitch at any one time*** shall only take place following the written agreement of the council.

Condition 9

No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site and no commercial activities shall take place on the land, including the external storage of materials ***or the burning of waste or any other materials.***

Condition 10 to be deleted as duplicates requirement of condition 9

Condition 17

As the application is retrospective, re word condition to read

"Within a period of 2 months from the date of this approval, a programme of archaeological work (which may comprise more than one phase of work) shall be carried out in accordance with a written scheme of investigation, which shall first have been submitted to and approved in writing by the Local Planning Authority. The development shall take place in accordance with the detailed scheme pursuant to this condition"

The agent has been asked to clarify if they will agree to the legal agreement to provide SPA mitigation. The agent has advised that the client agrees in principle to the payments although the statics on the site are 2-bed not 3-bed. (For information the figures provided for SANG/SAMM payments in the report are for 3-bed units). Also they have advised that the transit pitches are more akin to hotel rooms or camping site pitches, that do not attract SANG/SAMM contributions and are unlikely to have a 100% occupancy.

It is considered that the amounts should be altered for the 8 permanent pitches to reflect the information provided by the agent and that it is reasonable to exclude any requirement in respect of the transit pitches. Revised payments required would be $£492.61 \times 8 = £3940.88$.

Site Address: Plot 700, Wharfedale Road, Winnersh Triangle

Application No: VAR/2014/2499, Pages 55-105

Points of Clarification

There was no noise restriction or hours of occupation condition on the previous use of the site by Parcel Force/Royal Mail and no noise restriction/hours of operation condition placed upon the outline consent for the business park.

Please see the Patrizia Briefing Note prepared by Grayling received on the 22 June 2015; the accompanying Appendix prepared by Barton Willmore (reference 23254/A7/FB/RM) dated 22nd June 2015 and Barton Willmore letter dated 24th June 2015, addressed to Laura Ashton, which objects to use of additional conditions is included as an addendum to this update.

Site Address: Garage Block adjacent to 13 Barrett Crescent Wokingham RG40 1UR

Application No: F/2015/0060, Pages 107-118.

A Committee site visit took place on 19th June 2015. The site is being temporarily and extensively used as a compound during works to update kitchens on the estate.

Councillor Singleton raised the issue of whether any on-street parking would be lost as a result of the development. There are currently double yellow lines to either side of the access to the former garage block. The new access will be moved closer to No.13 Barrett Crescent through a portion of verge where there are double yellow lines which prevent on-street parking. Conversely, the existing access will be closed and the provision of yellow lines at this point is a matter for the Highway Authority.



No other matters have arisen since preparation of the report and the recommendation remains as per the report.

Pre-emptive site visits

F/2014/1561 - Land West of Old Wokingham Road (Pinewood), Crowthorne

Proposed erection of 116 dwellings with associated access, highway works, drainage works (SUDS), open space and landscaping including provision of Suitable Alternative Natural Greenspace (SANG).

Reason - to assess the impact on the character of the area, relationships with adjacent land uses and highway impact

F/2015/0430 – Pine Platt, Heath Ride, Finchampstead

Proposed erection of a 5 bedroom dwelling with associated car parking and landscaping following the demolition of the existing dwelling

Reason – To view the site in the context of the streetscene and wider character of the area

O/2014/1944 – Balcombe Nurseries, Basingstoke Road, Swallowfield

Proposed erection of 3 dwellings with garages

Reason – To view the site in the context of the streetscene and wider character of the area and see the existing situation on site (hardsurfacing and commercial building)

Planning application number VAR/2014/2499. Plot 700, Wharfedale Road, Winnersh Triangle

Context

Patrizia and joint venture partner Oaktree acquired the Winnersh Triangle site from Segro in 2013 with a commitment to develop further office and light industrial space. In July 2014 planning consent was granted by Wokingham Borough Council for 70,000 sq ft of new development to the east of the site which will be occupied by Rockwell Collins and secures their presence in the Borough.

Rationale

- The current planning application seeks to vary condition 12 of the planning consent RM/2014/0366.
- This condition prevents the movement of goods or vehicles between the hours of 8pm and 7am on any day and the applicant is requesting that this be varied to allow unrestricted access to the site.
- We set out below the reasons for this variation and to provide assurances on noise and traffic.

The occupant

- Patrizia is developing a bespoke facility on Plot 700 for defence and aerospace company, Rockwell Collins. Due to the nature of its operation, it is important that Rockwell Collins has unrestricted access to the site.
- Rockwell Collins does not expect there to be any significant deliveries, either in number or size, between 11pm and 7am. Access will only be required in very exceptional circumstances, for example to repair or replace a flight component for a time critical RAF need, and such access is usually undertaken by small vans or cars, not usually by Heavy Good Vehicles (HGVs).
- Rockwell Collins is currently located at Suttons Business Park. By assessing its current operations, it can be confirmed that out-of-hours deliveries are the exception. Only a handful of deliveries are made over the course of a month during the 11pm to 7am period.

Engagement

- Patrizia has written to and liaised with its neighbours to clarify the points detailed above and has undertaken a face to face meeting to address concerns.
- In addition, Patrizia has maintained a close dialogue with ward councillors throughout the planning application process.
- Whilst the issue of lighting falls outside of the scope of this application, it would be useful to highlight that Plot 700 will benefit from the latest design lighting which will face into the site and downwards to avoid any light spill which would affect neighbours. This supplementary work was carried out as a result of dialogue and to work collaboratively with those affected. The lighting strategy has been approved by the planning department and will be subject to monitoring by Environmental Health Officers.

Noise

- Despite there having been no restrictions imposed on noise in the estate's 2007 outline planning consent, under which an application for reserved matters consent was made, Patrizia voluntarily undertook a comprehensive acoustic report, which formed part of the planning application last year. As part of this work, noise attenuation measures have been made on the site boundary through the use of a noise reducing specification for a close boarded fence to eliminate noise impact on neighbours. This approach has been approved by Officers at WBC, as set out in the Officer's committee report.
- If HGVs were to access the site at night, it is accepted by your Officers and the EHO that the noise generated would not materially exceed the background noise levels already in existence and so residential amenity would not be unreasonably affected.
- Despite the above, it is recognised that noise is a sensitive issue for our neighbouring residents. Reflecting this, a voluntary Delivery Management Plan (DMP) has been produced, and agreed to by Rockwell Collins. This ensures that any out of hours vehicle movements must comply with stringent noise mitigation measures. This will be enforced by Rockwell Collins who will have 24 hour security located at the site entrance. This DMP has been endorsed by Officers at WBC and found to be robust. It will be secured by a re-worded planning condition 12.

Vision

Since taking ownership of the site, Patrizia has been approached by numerous potential occupiers whose businesses are distribution and logistics focused. Given its access to the motorway network, Winnersh Triangle is well-suited to this type of occupier, indeed Plot 700 was previously occupied by Parcelforce. Patrizia has, however, consistently declined the interest by these sectors as the aspiration for Winnersh Triangle is to develop a high tech cluster, creating an inviting destination in which to work. This can only be realised by actively limiting HGV movements and commercial traffic generally across the site. Significant HGV traffic would be wholly detrimental to that vision.

BACKGROUND INFORMATION

PLANNING COMMITTEE 24TH JUNE 2015

AGENDA ITEM 7: PLOT 700, WINNERSH TRIANGLE, DELETION OF CONDITION 12 (REFERENCE VAR/2014/2499)

Vision for the Park

When SEGRO originally progressed the comprehensive planning application for the redevelopment of the estate in 2006 they very consciously wanted to change the nature of the park from an industrial and distribution operation to a high tech office based park. A conscious decision was therefore taken to only apply for Class B1 uses (offices, research and development and light industrial). Class B2 (general industrial) and Class B8 (storage and distribution) uses were not included in the outline planning permission. The new owners of the park, Patrizia, share the high tech office based vision for the future of the park.

Permitted Land Use Classes

Concern has been expressed by neighbours of Plot 700 that there is potential for the unit to operate "24 hours a day 7 days a week" with deliveries "continuously" through each and every night, much in the way the previous Parcel Force unit operated.

There should be no misunderstanding that if a unit operated in this way then it would need permission for a Class B8 warehousing and distribution use. Parcel Force operated under a Class B8 use. Rockwell Collins, or any other future occupier, cannot operate as a main warehouse and distribution business because it would be in breach of the planning permission granted in that no permission exists for a B8 use. The use of the unit is for B1 offices, high tech production, and research and development and reflects the permission granted. This means warehouse and distribution can only be an ancillary process, which fits with how many B1 businesses operate, such as Rockwell Collins, who will have very infrequent deliveries (perhaps 1 or 2 lorry movements a month at night time).

In addition, the design of the building, with a mezzanine at first floor level, is such that there is physically not the capacity to accommodate any large equipment that would necessitate HGV use.

The fear expressed by residents, whilst understandable, in reality cannot occur because it would breach the planning permission which it operates under.

If the use of the unit moved from Class B1 to Class B8 without planning permission then enforcement action could be taken by the council to protect residential amenity.

Noise & Residential Amenity

All the existing buildings at Winnersh Triangle have no constraints on their hours of operation or deliveries.

The outline planning permission granted for the complete redevelopment of Winnersh Triangle in 2007 continued this flexibility with no conditions being placed on the outline planning permission restricting the hours of operation/deliveries for any development brought forward through reserved

matters. It was clear that when the permission was granted it was considered that residential amenity would not be effected, otherwise a condition restricting deliveries or hours of operation would have been included.

The information submitted with the reserved matters application for the building (Plot 700) included a Noise Report. This is the same, unaltered Noise Report that has also been re-submitted with the application to remove condition 12 (which is to be considered by the Planning Committee). This Noise Report confirmed/reconfirms there was and is no requirement to restrict hours of operation or deliveries at unit 700, subject to the inclusion of an acoustic fence with a specification of 10kg/m², which is already approved under the reserved matters approval.

It is clear from the Officers Report that the Noise Report submitted was not reviewed or considered in detail at the time of granting reserved matters approval for plot 700. At the time there were several changes of personnel contributing to Officers choosing to place an unnecessary condition (condition 12) on the permission restricting hours of delivery. The officers report confirms that they have now considered the topic fully and the EHO and the planning officer accept that condition 12 should not have originally been placed on the reserved matters approval and so are recommending its removal. It should be remembered this Officer view is based on no new information, just the same reports provided at the reserved matters stage.

It is also relevant to note that the applicants were not advised that the restrictive condition 12 was to be placed on the permission. As a consequence, it was a surprise to the applicants that a restrictive condition was placed on the planning permission because (a) there is no such restrictions imposed on the outline planning permission and (b) the park has always operated without any restrictions and (c) there is no technical justification for restriction as residential amenity will not be changed. Implementation of the close boarded fence, as required by condition 7, will result in the internal noise level in a first floor bedroom with an open window during a delivery being 1 dB greater than if there were no deliveries present (using the higher of the 'movement' noise levels i.e. a heavily laden HGV departing). Currently the existing ambient noise is 1 dB above the Wokingham Borough Council 'good' criteria for sleeping and resting and with a laden HGV departure this would increase by 1dB. According to DFT guidance a change in noise level of 1 dB is 'negligible.' A HGV delivery and unladen departure will not increase the receptor noise level in excess of the 'good' criteria for sleeping and resting.

In light of the above context the applicants have therefore been forced to apply to remove the unnecessary condition (12) as a restriction on operations is not suitable for all occupiers. Rockwell Collins, who is to occupy plot 700, is an important local business and require unrestricted deliveries and operation.

Rockwell Collins

It might be helpful to set out some useful background about Rockwell Collins, and how they intend to operate at Plot 700.

Rockwell Collins is an American company founded in 1933, specialising in aerospace and defence. Their support network spans 150 countries with 20,000 employees worldwide.

Rockwell Collins aircraft electronics are installed in the cockpits of nearly every airline in the world and its communication systems transmit nearly 70 percent of U.S. and allied military airborne communications. The company is involved in the new Boeing 787 Dreamliner and the Airbus A350XWB.

Rockwell Collins has two offices in the UK – the headquarters in Suttons Business Park (within Wokingham Borough Council), and a Simulation and Training Solutions centre in West Sussex.

Rockwell Collins will be relocating their headquarters to Plot 700, Winnersh Triangle in order to provide a head office for its UK activities and a high technology research and development centre. The new Rockwell Collins HQ at Winnersh Triangle will bring an initial 200 employees with

capacity for a further 50 to Winnersh Triangle and the new location benefits from being purpose built to provide a creative environment to continue the development of innovative solutions to customers' requirements. As such a lease has been signed for the Winnersh Triangle site for 15 years.

The current HQ at Suttons was established in 1985 as a specialist avionics service centre. Since then the business has built on this core technology and developed a number of market leading navigation products that are supplied to customers around the world.

The business operates on flexible working hours between 08:00 and 19:00 hours with occasional exceptions due to customers (including the RAF) having an "Aircraft on the Ground" (AOG) incident that Rockwell Collins are contracted to respond to 24/7. Such incidents occur several times a month and involve the potential need to have unrestricted access to the site.

Delivery Management Plan

Despite there being, in our view, no basis to retain a restriction on operations, because the applicants appreciate the concerns expressed by residents and wish to also have as good a relationship with residents as practical, they have prepared a Delivery Management Plan that will give added reassurance about their approach to protecting residential amenity.

Engagement with Residents

Since the start of the planning process at Plot 700, Patrizia has been active at engaging with local residents. They have written to neighbours and undertaken face to face meetings to address specific concerns, and they have maintained a close dialogue with ward councillors throughout the process.

Patrizia have been proactive in responding to concerns from local residents. The reserved matters planning proposals were amended in direct response to comments from local residents, and following several meetings with a local resident, enhancements were made to the landscaping scheme and the sprinkler tank was reduced in height by 4 metres. Considerable effort has been expended to try to meet all reasonable suggestions made by residents.

Patrizia and Rockwell Collins want to have a good relationship with residents as both will be involved in the park for many years to come.

We trust that the above is helpful information which sets out clearly that there is no technical reason for imposing any limitation on deliveries, that the fears of residents about a high volume of HGV movements are unfounded because the planning permission does not allow the unit to operate as a warehouse and distribution unit (which would be a B8 use), and the applicants, despite not being compelled to do so, have agreed to implement a Delivery Management Plan.

We feel planning permission to remove the current condition 12 should therefore be approved. Whilst we do not see it as being necessary technically to formally condition the implementation of the Delivery Management Plan, if members feel it beneficial to do so then we will accept this.

We ask that you approve the application, in accordance with your officer's and technical advice at the Committee meeting on 24th June 2015.

Laura Ashton
Development & Regeneration Service
Wokingham Borough Council
Council Offices
Shute End
Wokingham
Berkshire
RG40 1BN

23254/A3/RM/FB

24 June 2015

By e-mail: laura.ashton@wokingham.gov.uk

Dear Laura,

WINNERSH TRIANGLE – PLOT 700

APPLICATION TO REMOVE CONDITION 12

Further to our recent telephone conversation and your email of today, I write to provide you with my client's latest views ahead of tonight's planning committee meeting.

As you know, we contend that the original imposition of a restriction on hours of servicing of the unit imposed by condition 12 on the approval of reserved matters for the building failed the tests for acceptable planning conditions contained in the NPPF and PPG. Therefore our application for the complete deletion of condition 12 (which is before the committee for determination tonight) should be approved. Our rationale is as follows.

- The NPPF sets out the 6 tests that planning conditions must pass in order to be able to legitimately be applied to a grant of planning permission (Paragraph: 004 Reference ID: 21a-004-20140306 – extract enclosed). The tests are:
 1. necessary;
 2. relevant to planning and;
 3. to the development to be permitted;
 4. enforceable;
 5. precise and;
 6. Reasonable in all other respects."
- In the case of the application, the stated reason why restrictions were placed on the permission was to protect residential amenity (see condition 12 and "reason" on decision notice). In this instance, the only topic impacting residential amenity is noise and light disturbance from vehicles. Light issues are not relevant because boundary treatment contains light spillage acceptably.

- As you will appreciate, noise impact is a technical issue. For the applicant, a qualified noise expert has produced a report confirming that unrestricted servicing will not unacceptably impact on residential amenity of residents (by that read noise creation) if the already approved boundary fence treatment is implemented. Your own EHO, another qualified noise expert, has accepted the legitimacy of the submission and agrees with the conclusions.
- The only basis on which to go against this technical advice, which as officers I acknowledge you have not done in your recommendation to committee, would be if other credible technical advice has been received explicitly about the specific proposal that comes to a different conclusion. I am not aware that such contradictory advice exists. Therefore there is no "reasonable" basis upon which to go against the technical expert's evidence as agreed by your own technical expert – your EHO.
- To retain a condition in any way restricting activity would fail the government's condition tests, specifically:
 1. necessary;
 2. relevant to the development to be permitted;
 3. Reasonable in all other respects.
- As you are also aware, whilst we do not consider it necessary, in recognition of the concerns of residents we have voluntarily agreed to include a Delivery Management Plan and so support the officer's original recommendation to amend the wording of condition 12 to allow unrestricted servicing but require the implementation of the approved DMP.

We are aware that there may be a suggestion that additional conditions are placed on any approval, as indicated in your email today. We anticipate that suggestions may include personalising the removal of delivery restrictions to Rockwell Collins so that should they leave the unit a new tenant would then be bound by the original restrictions imposed on night-time deliveries. We also anticipate that there may be some desire to condition further submissions made in support of the planning application. Our views on the legitimacy of such proposed conditions are set out below.

Personal Condition to Rockwell Collins

The Government's "National Planning Guidance" confirms explicitly that planning conditions cannot be used to personalise a planning permission to an individual company (Paragraph: 015 Reference ID: 21a-015-20140306 – extract attached).

We do not support the application of this condition.

Conditioning the Patrizia Briefing Note and Barton Willmore Appendix

The NPPF sets out the 6 tests that planning conditions must pass in order to be able to legitimately be applied to a grant of planning permission (Paragraph: 004 Reference ID: 21a-004-20140306 – extract attached). The tests are:

- necessary;
- relevant to planning and;
- to the development to be permitted;

- enforceable;
- precise and;
- Reasonable in all other respects.

I enclose the government's advice and how I think it applies in this instance. In summary, I am of the following view. The condition fails a number of these tests. Firstly, it is not "necessary", there is no technical basis upon which there is a need to restrict hours of operation and therefore there is no need to require the applicant to follow the text set out in the documents. Either there is a need to restrict hours of operation to protect residential amenity or there is not. There is no place for "desirable" in the planning system. Secondly, in light of the above the condition is not "relevant to the development to be permitted". Thirdly, the wording of the documents is not precise and enforceable. Fourthly, it is not reasonable in other respects to restrict or to place the burden of applying the content of the documents onto the applicants when residential amenity will not be unacceptably impacted when the only purpose of restriction is to protect residential amenity.

We therefore do not support the inclusion of this condition.

Communication with residents

You will no doubt be aware that Mr Moxon, a local resident, has shown a keen interest in the development of plot 700. We have been in contact with him throughout the planning and building process. Most recently we have exchanged e-mails (attached). In his latest email (attached) Mr Moxon makes some comments regarding the suitability of the boundary treatment and how our noise report has been undertaken. I enclose a letter from our Noise Consultant responding to the issues raised. You will see that we consider there is no technical validity to the concerns raised by Mr Moxon.

As we have expressed before, our client is sympathetic to the concerns of residents and can understand them. However, we do not consider the concerns expressed are sufficient and have no technical basis to stop planning permission from being granted to remove the restrictions on hours of operation of plot 700.

I would be grateful if you would make Committee members aware of this letter and its enclosures.



ROBIN MEAKINS

Senior Planning Partner

Encs.

- Extracts from NPPF & NPPG
- Table applying National Guidance to Plot 700
- E-mail Correspondence between Barton Willmore & Mr Moxon
- Letter from EnvironNoise

place, no further planning permission is required for development which falls within its scope.

202. Neighbourhood Development Orders and Community Right to Build Orders require the support of the local community through a referendum. Therefore, local planning authorities should take a proactive and positive approach to proposals, working collaboratively with community organisations to resolve any issues before draft orders are submitted for examination. Policies in this Framework that relate to decision-taking should be read as applying to the consideration of proposed Neighbourhood Development Orders, wherever this is appropriate given the context and relevant legislation.

Planning conditions and obligations

203. 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.
204. Planning obligations should only be sought where they meet all of the following tests:
- necessary to make the development acceptable in planning terms;
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.
205. Where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled.
206. Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

Enforcement

207. Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.

Planning Practice Guidance <http://planningguidance.planningportal.gov.uk>

Guidance

Use of Planning Conditions

Print 

1. Why and how are conditions imposed? (<http://planningguidance.planningportal.gov.uk/blog/guidance/use-of-planning-conditions/why-and-how-are-conditions-imposed/>)

Why and how are conditions imposed?

Why are conditions imposed on a planning permission?

When used properly, conditions can enhance the quality of development and enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of the development. 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.

ID 21a-001-20140306 Last updated 06 03 2014

What are the main legal powers relating to use of conditions?

The main powers relating to local planning authority use of conditions are in Sections 70, 72, 73, 73A, and Schedule 5 of the Town and Country Planning Act 1990 [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/section/70) (<http://www.legislation.gov.uk/ukpga/1990/8/section/70>). Powers to impose conditions on appeal are also given to the Secretaries of State or their Inspectors by sections 77, 79, 177, and Schedule 6 of the Act [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/section/77) (<http://www.legislation.gov.uk/ukpga/1990/8/section/77>). In some areas there may also be powers under local Acts which complement or vary the powers in the 1990 Act.

Section 70(1)(a) of the Act [\[a\]](http://www.legislation.gov.uk/ukpga/1990/8/section/70) (<http://www.legislation.gov.uk/ukpga/1990/8/section/70>) enables the local planning authority in granting planning permission to impose “such conditions as they think fit”. This power must be interpreted in light of material factors such as the National Planning Policy Framework, this supporting guidance on the use of conditions, and relevant case law.

ID 21a-002-20140306 Last updated 06 03 2014

2. Application of the six tests in National Planning Policy Framework policy

(<http://planningguidance.planningportal.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>)

Application of the six tests in National Planning Policy Framework policy

What is the Government’s policy on the use of conditions in planning permissions?

Related policy

National Planning Policy Framework

Paragraph 203 of the National Planning Policy Framework

(http://planningguidance.planningportal.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph_203) states “Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions”

Paragraph 206 of the National Planning Policy Framework

(http://planningguidance.planningportal.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph_206) states “Planning conditions should only be imposed where they are:

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

The policy requirement above is referred to in this guidance as the **six tests**.

ID 21a-003-20140306 Last updated 06 03 2014

How does the Local Planning Authority ensure that the six tests in paragraph 206 of the National Planning Policy Framework have been met?

Whether it is appropriate for the Local Planning Authority to impose a condition on a grant of planning permission will depend on the specifics of the case. Conditions should help to deliver development plan policy and accord with the requirements of the National Planning Policy Framework, including satisfying the six tests for conditions.

The six tests must all be satisfied each time a decision to grant planning permission subject to conditions is made. The tests are set out below, alongside key considerations:

TEST	KEY QUESTIONS
Necessary	<p>Will it be appropriate to refuse planning permission without the requirements imposed by the condition?</p> <ul style="list-style-type: none"> • A condition must not be imposed unless there is a definite planning reason for it, ie it is needed to make the development acceptable in planning terms. • If a condition is wider in scope than is necessary to achieve the desired objective it will fail the test of necessity.

- Paragraph 203
(http://planningguidance.planningportal.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph_203)
- Paragraph 206
(http://planningguidance.planningportal.gov.uk/blog/policy/achieving-sustainable-development/decision-taking/#paragraph_206)

<p>Relevant to planning</p>	<p>Does the condition relate to planning objectives and is it within the scope of the permission to which it is to be attached?</p> <ul style="list-style-type: none"> • A condition must not be used to control matters that are subject to specific control elsewhere in planning legislation (for example, advertisement control, listed building consents, or tree preservation). • Specific controls outside planning legislation may provide an alternative means of managing certain matters (for example, works on public highways often require highways' consent).
<p>Relevant to the development to be permitted</p>	<p>Does the condition fairly and reasonably relate to the development to be permitted?</p> <ul style="list-style-type: none"> • It is not sufficient that a condition is related to planning objectives: it must also be justified by the nature or impact of the development permitted. • A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development.
<p>Enforceable</p>	<p>Would it be practicably possible to enforce the condition?</p> <ul style="list-style-type: none"> • Unenforceable conditions include those for which it would, in practice, be impossible to detect a contravention or remedy any breach of the condition, or those concerned with matters over which the applicant has no control.
<p>Precise</p>	<p>Is the condition written in a way that makes it clear to the applicant and others what must be done to comply with it?</p> <ul style="list-style-type: none"> • Poorly worded conditions are those that do not clearly state what is required and when must not be used.
<p>Reasonable in all other respects</p>	<p>Is the condition reasonable?</p> <ul style="list-style-type: none"> • Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness. • Unreasonable conditions cannot be used to make development that is unacceptable in planning terms acceptable.

ID 21a-004-20140306 Last updated 06 03 2014

A temporary planning permission may also be appropriate on vacant land/buildings to enable use for a temporary period prior to any longer term regeneration plans coming forward (a meanwhile use) or more generally to encourage empty property to be brought back into use. This can benefit an area by increasing activity.

It will rarely be justifiable to grant a second temporary permission – further permissions should normally be granted permanently or refused if there is clear justification for doing so. There is no presumption that a temporary grant of planning of planning permission should be granted permanently.

A condition requiring the demolition after a stated period of a building that is clearly intended to be permanent is unlikely to pass the test of reasonableness. Conditions requiring demolition of buildings which are imposed on planning permissions for change of use are unlikely to relate fairly and reasonably to the development permitted.

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Is it appropriate to use conditions to limit the benefits of the planning permission to a particular person or group of people?

Unless the permission otherwise provides, planning permission runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where granting planning permission for development that would not normally be permitted on the site could be justified on planning grounds because of who would benefit from the permission. For example, conditions limiting benefits to a particular class of people, such as new residential accommodation in the open countryside for agricultural or forestry workers, may be justified on the grounds that an applicant has successfully demonstrated an exceptional need.

A condition used to grant planning permission solely on grounds of an individual's personal circumstances will scarcely ever be justified in the case of permission for the erection of a permanent building, but might, for example, result from enforcement action which would otherwise cause individual hardship.

A condition limiting the benefit of the permission to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company.

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What about conditions that are requested by third parties?

Third parties such as statutory consultees can suggest conditions to mitigate potential impacts and make a development acceptable in planning terms. The decision as to whether it is appropriate to impose such conditions rests with the local planning authority. As with any condition, the local planning authority should consider whether the six tests

(<http://planningguidance.planningportal.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>) will be met. Where third parties suggest conditions it is essential for them to first consider whether the six tests (<http://planningguidance.planningportal.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>) will be met on a case by case basis with reference to the facts of the proposal under consideration. Blanket standard conditions should not be used without proper consideration of whether they are necessary, and if so, how they would apply to the case in question.

It is not appropriate to require in a condition that a development/requirement should be carried out to the satisfaction of a third party as this decision rests with the local planning authority.

NATIONAL GUIDANCE ON PLANNING CONDITIONS APPLIED TO WINNERSH TRIANGEL - PLOT 700 - CONDITION 12

The NPG sets out guidance on conditions. The following is an extract (Paragraph: 004 Reference ID: 21a-004-20140306).

TEST	KEY QUESTIONS
Necessary	<p>Will it be appropriate to refuse planning permission without the requirements imposed by the condition?</p> <p>A condition must not be imposed unless there is a definite planning reason for it, ie it is needed to make the development acceptable in planning terms.</p> <p>If a condition is wider in scope than is necessary to achieve the desired objective it will fail the test of necessity.</p>
Relevant to planning	<p>Does the condition relate to planning objectives and is it within the scope of the permission to which it is to be attached?</p> <p>A condition must not be used to control matters that are subject to specific control elsewhere in planning legislation (for example, advertisement control, listed building consents, or tree preservation).</p> <p>Specific controls outside planning legislation may provide an alternative means of managing certain matters (for example, works on public highways often require highways' consent).</p>
Relevant to the development to be permitted	<p>Does the condition fairly and reasonably relate to the development to be permitted?</p> <p>It is not sufficient that a condition is related to planning objectives: it must also be justified by the nature or impact of the development permitted.</p> <p>A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development.</p>
Enforceable	<p>Would it be practicably possible to enforce the condition?</p> <p>Unenforceable conditions include those for which it would, in practice, be impossible to detect a contravention or remedy any breach of the condition, or those concerned with matters over which the applicant has no control.</p>
Precise	<p>Is the condition written in a way that makes it clear to the applicant and others what must be done to comply with it?</p> <p>Poorly worded conditions are those that do not clearly state what is required and when must not be used.</p>
Reasonable in all other respects	<p>Is the condition reasonable?</p> <p>Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness.</p> <p>Unreasonable conditions cannot be used to make development that is unacceptable in planning terms acceptable.</p>

We have applied the above national guidance to the potential new conditions that could be considered for the application.

NPG Test (ref: Para: 004 Ref ID: 21a-004- 20140306)	Personal Condition	Conditioning Patrizia and Barton Willmore letters
<p>Necessary</p>	<p>The condition should not be imposed. There is no technical basis upon which there is a need to restrict hours of delivery.</p> <p>Moreover, to personalise the permission to Rockwell Collins overcomes no planning issue. Either unrestricted servicing is technically acceptable or it is not. Residential amenity means noise, lighting, appearance, overshadowing, privacy etc. It is not necessary to impose a personal permission or not to permit unrestricted servicing of the unit for any of these reasons. The proposed condition therefore fails this test.</p>	<p>The condition should not be imposed. There is no technical basis upon which there is a need to restrict hours of delivery.</p>
<p>relevant to planning</p>		
<p>relevant to the development to be permitted</p>	<p>It is not sufficient that a condition is related to planning objectives: it must also be justified by the nature or impact of the development permitted. There is no technical need to restrict or to personalise the permission to protect residential amenity. The only issue of relevance for residential amenity is noise.</p> <p>A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development. The high background noise level experienced by residents may not help their residential amenity but the proposed unrestricted servicing of the building will not make the situation unacceptably worse. The condition is not justified by the nature of the impact and so fails this test.</p>	<p>It is not sufficient that a condition is related to planning objectives: it must also be justified by the nature or impact of the development permitted. There is no technical need to restrict or to personalise the permission to protect residential amenity. The only issue of relevance for residential amenity is noise.</p> <p>A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development. The high background noise level experienced by residents may not help their residential amenity but the proposed unrestricted servicing of the building will not make the situation unacceptably worse. The condition is not justified by the nature of the impact and so fails this test.</p>
<p>enforceable</p>	<p>The Government's "National Planning Guidance" confirms explicitly that planning conditions</p>	<p>The wording of the letters have not be prepared with the assumption that they would be</p>

	cannot be used to personalise a permission to an individual company (Paragraph: 015 Reference ID: 21a-015-20140306). The officer's proposal is therefore contrary to national planning guidance.	conditioned and the development to have to comply with it. The wording and meaning is therefore not precise (see below) and so it is not considered the condition would be enforceable. The condition therefore fails this test.
precise		Whilst the condition wording may be capable of being precise the content of the letters to which the condition relates is not sufficiently precise to enable enforcement of the condition. The DMP is precise and why it has been offered. The purpose of the letter and appendix was provided background information. Its purpose and content was not written in a way so that it could be conditioned and enforced against. The condition therefore fails this test.
reasonable in all other respects	Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness. It is unjustifiable to place a personal permission on plot 700 for servicing times as no technical basis exists. With no technical basis for restricting servicing times it places unnecessary burdens on the owners of the unit in terms of who the unit can be occupied by. The condition therefore fails this test.	This condition places an unjustifiable and disproportionate burden on an applicant. With no technical basis for restricting servicing times it places unnecessary burdens on the owners of the unit. It fails the test of reasonableness.

Based on our analysis we do not consider these two potential conditions would meet the national planning guidance tests on planning conditions.



Environoise Consulting Limited
Pioneer House
North Road
Ellesmere Port
Cheshire CH65 1AD
www.environoise.co.uk
info@environoise.co.uk

Tuesday, 23 June 2015

Ref: 20419L04RMWpk

FAO: Ms. Laura Stevens
Development Management
Wokingham Borough Council
PO Box 157
Shute End
RG40 1WR
laura.stevens@wokingham.gov.uk

Dear Ms. Stevens,

Plot 700 Winnersh Triangle, Reading

Environoise Consulting Limited has been instructed by Patrizia (UK) Limited on behalf of Rockwell Collins to review queries relating to noise impact from the proposed development at Plot 700 Winnersh Triangle, Reading. These have been provided in an e-mail by Mr. Robert J Moxon, Daniels & Associates dated 16th June 2015¹. Our response is as follows:

Reversing Alarms

The Single Event Noise Level (L_{AX}) figures given in Table 7 of our report 20419R02bRMWpk are for single HGV movements and as such can be regarded as including a noise contribution from reversing alarms. But to provide some reassurance to Mr. Moxon, I have calculated the effect of a reversing alarm acting alone. Typical noise levels for white noise alarms are from between 82dBA to 92dBA at 1m. If, during a reversal a 92dBA alarm was on for say a full 10 seconds (which is quite a lengthy reverse) and we assess the noise at the receptor at ground and first floor level the resultant noise levels would be as follows:

- 33dB $L_{Aeq,1hour}$ (using a daytime assessment period of 1 hour) and;
- 44dB $L_{Aeq,5mins}$ (using a night-time assessment period of 5 minutes).

These figures are based on there being no boundary screen in place. If we apply the attenuation provided by the suitably built recommended height screen, the resultant noise levels would be as follows:

- 23dB $L_{Aeq,1hour}$ ground floor and 26dB $L_{Aeq,1hour}$ first floor (using a daytime assessment period of 1 hour) and;
- 34dB $L_{Aeq,5mins}$ ground floor and 37dB $L_{Aeq,5mins}$ at first floor (using a night-time assessment period of 5 minutes).

¹E-mail from Faith Beeson, Barton Wilmore to Ray Woolley, Environoise Consulting Limited on 18th June 2015

Assessment to Background Noise Levels

The measured day and night-time representative background noise levels are 46dB L_{A90, (5mins)} and 42dB L_{A90 (5mins)} respectively.

Therefore the resultant noise level at the nearest residential property due to reversing alarms are more than 10dB below the existing daytime background noise level and at least 5dB below the existing night-time background noise level with the recommended screen.

Assessment to Ambient Noise Levels

The lowest measured ambient daytime and night-time noise levels are 48dB L_{Aeq, 1hour} and 44dB L_{Aeq, 5mins} respectively.

Therefore, the resultant noise levels are also 22dB and 7dB below the lowest daytime and night-time ambient noise levels respectively.

The above calculation does not consider the attenuation of 13dB provided by a partially open window. Where this is considered, daytime and night-time internal noise levels are predicted to be 14dB and 6dB below the internal noise criterion of 30dB L_{Aeq, T} within the nearest residential property.

The calculations show that the effect of reversing alarms will not be significant during the daytime and night-time period (see section 6.1.1 of report 20419R02bRMWpk for discussion of noise levels).

Daytime / Night-time Period

Daytime has been considered as the period between 07.00hrs until 23.00hrs and night-time between 23.00hrs and 07.00hrs as prescribed in BS 4142:1997 (now superseded by BS 4142:2014)

Fence Specification

The Highways Agency 'Design Manual for Roads and Bridges document HA66/95, Environmental Barriers Technical Requirements' states that:

"A generally applicable acoustic requirement for a barrier is to limit the component of noise passing through it to 10dBA less than the predicted level due to sound diffracted over the barrier".

It means that if attenuation of say 10dB is predicted by barrier calculations due to the screening effect of a barrier, the attenuation performance through the barrier itself should be 10+10=20dB.

We have recommended that a close boarded fence of at least 10kg/m² surface density free from gaps is erected. Such a fence will provide performance in excess of the 20dB attenuation needed. It is acknowledged that the recommendation 'free from gaps' means exactly that. A shiplap type fence would not be appropriate since gaps can readily occur especially with ageing. A tongue and groove system will remain gap free and is what (we have been informed) will be implemented.



Yours sincerely,

A handwritten signature in blue ink that reads "Ray Woolley".

Ray Woolley MIOA
Managing Director
For and behalf of Environoise Consulting Limited