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30 April 2025

Dear Dorothy,

Section 73 application to remove Condition 9 of planning application reference H/24/98601 for side and rear extensions and raising of roof to provide first floor accommodation along with temporary changes to existing ground levels (Part Retrospective) at Derry Dacy, Peewit Hill, Bursledon, Southampton, SO31 8BL.

Introduction

Planning permission was granted by the Bursledon, Hamble-le-Rice and Hound Local Area Committee for the above development on 10th April 2025, with Condition 9 of the decision notice stating;

Within 12 months of this planning approval, the temporary site access which has been constructed at the end of Peewit Hill shall be removed and land restored to its original condition, including replacement boundary planting in accordance with a reinstatement and landscape plan which has first been submitted to and approved in writing by the Local Planning Authority. All works shall be undertaken in accordance with the approved plan. Replacement landscaping shall be maintained for a minimum period of ten years. Any trees, shrubs, or plants that die, are removed, or become seriously damaged or diseased within this period shall be replaced in the next planting season with specimens of equivalent size, species, and maturity. No further tree or vegetation removal shall occur without prior written approval from the Local Planning Authority.

Reason: *In the interests of the visual amenity of the locality.*

The proposed plans approved by this planning permission do not show the 'temporary' access referred to in Condition 9, which provides a second access to the site and, in any case, has been designed as a permanent access, rather than a temporary access.

The applicant seeks to remove this condition through this Section 73 application.

Material Considerations

Paragraph 57 of the NPPF states;

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. Agreeing conditions early is beneficial to all parties involved in the process and can

speed up decision-making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.

Paragraph 140 of the NPPF states;

Local planning authorities should ensure that relevant planning conditions refer to clear and accurate plans and drawings which provide visual clarity about the design of the development, and are clear about the approved use of materials where appropriate. This will provide greater certainty for those implementing the planning permission on how to comply with the permission and a clearer basis for local planning authorities to identify breaches of planning control. Local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used).

The National Planning Practice Guidance (NPPG) provides further guidance, stating at Paragraph 003;

Paragraph 57 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; and*
- 6. reasonable in all other respects.*

These are referred to in this guidance as the 6 tests, and each of them need to be satisfied for each condition which an authority intends to apply. See also guidance on the use of model conditions.

Also relevant is the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) which states under Schedule 2, Part 2, Class B;

Permitted development

B. The formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part).

The access was constructed under permitted development.

Planning Assessment

It should be noted that the access, the subject of this condition 9, is a permanent access, rather than a temporary access and in that respect, the planning condition is not precise, nor enforceable.

Peewit Hill is an unclassified road and therefore the site access (the subject of Condition 9 of planning permission H/24/98601) is permitted development under Schedule 2, Part 2, Class B of the GPDO. As such, planning permission is not required for this access. Indeed, paragraph 50 of the Case Officer's report to the Local Area Committee confirmed this to be the case.

It was the planning committee, rather than the professional planning officer, who insisted on attaching Condition 9 to any planning permission.

Paragraph 55 of the NPPF is clear that planning conditions should not be used to restrict permitted development rights unless there is a clear justification to do. The reason provided by the LPA for this condition is 'in the interests of the visual amenity of the locality.' As this access is permitted development, the reason for the condition does not provide 'clear justification.'

Paragraph 140 of the NPPF advises that conditions should refer to clear and accurate drawings to provide greater certainty for those implementing planning permissions. As mentioned above, the approved proposed plans do not detail this permanent access.

Paragraph 57 of the NPPF provides guidance on the 6 tests that need to be satisfied, in applying conditions to decisions. Is the condition necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects.

The approved proposed plans do not detail this 'temporary' access (which is, in actuality, permanent) and therefore it is unclear from the plans as to the access to which Condition 9 refers. As a result, the condition is lacking in precision and therefore unenforceable. The condition is also completely irrelevant to the proposals for Derry Dacy itself and therefore, by extension, unnecessary. Together, this makes the condition unreasonable in all respects.

As such, the proposal fails ALL the tests for a lawful planning condition.

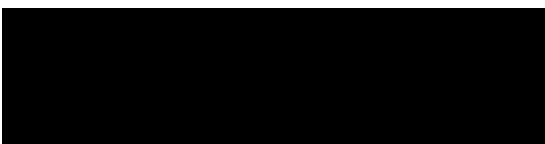
Conclusion

For the reason set out above, Condition 9 fails each of the 6 tests for the lawfulness of a planning condition. The condition is unnecessary, irrelevant to planning, irrelevant to the development permitted, unenforceable, imprecise and therefore unreasonable in all respects.

Accordingly, it is respectfully requested that this Condition 9 is removed from planning permission H/24/98601.

If you require anything further, please do not hesitate to contact me.

Yours sincerely



Louise Cutts BA(Hons) DipTP MRTPI
Director
Wessex Planning Ltd