

**PLANNING STATEMENT IN
RESPECT OF THE VARIATION OF
PLANNING CONDITIONS PERTAINING
TO COMMERCIAL USE WITHIN CLASS E**

AT

**THE STUDIO, FURZE FARM, DUNT
AVENUE, HURST, WOKINGHAM
RG10 0SY**

MLP REF: DA/25/188

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Contents

- 1.0 Introduction
- 2.0 The application site and surrounds
- 3.0 Planning history
- 4.0 The existing situation
- 5.0 The application of relevant planning policy
- 6.0 The variation sought
- 7.0 Summary - the planning balance

1.0 Introduction

- 1.1. This statement sets out the applicant's case to vary a planning condition on planning permission granted in August 1992 pertaining to the change of use of a building to Class B1 offices/"design studio".
- 1.2. In assessing this matter the Statement sets out the national approach to the imposition of planning conditions, related and relevant planning policies and the application of those policies. In so doing, the following conclusions are reached:
 - This application proposes a variation of conditions 3 and 6 in so far as they relate to use of the building and the provision of parking. This arises from the current use of the building within Class E(e) the provision of medical or health services which exceeds the limitation expressed by condition 3 on the original permission. The parking is provided in the manner shown but has not been formally marked out as is required by condition 6.
 - Class E as enacted in 2020 confers freedom to operate a range of commercial uses and this is material to consideration of the application. In saying this, it is acknowledged that the full range of commercial uses within Class E may not be appropriate for the location and this is reflected in the variation which is sought.
 - Parking provision is readily available and there is no requirement for it to be formally laid out as has been the case since the enactment of the 1992 permission.
- 1.2 On the basis of the foregoing, the proposed variation of the conditions meets with national policy and is acceptable. The planning permission should be varied accordingly.

2.0 The application site and surrounds

- 2.1 The application site comprises a former agricultural building which was converted to commercial use in the mid 1990's. It has been variously used as such by a number of occupiers since this time.
- 2.2 The access and parking areas have been provided since this time and formerly served the chicken farm.
- 2.3 In its wider context the site lies between Winnersh and the settlement of Hurst and is accessible to the residents of this and surrounding housing. It is operated as a health practice and specifically a sports massage and therapy use.

3.0 Relevant planning history

- 3.1. Planning permission for the change of use of the redundant building was granted in August 1992 under reference 39571. This was the subject of various conditions pertaining to a limitation on use and the marking out of parking areas. The relevant conditions state:

3. The use of the buildings hereby permitted shall be limited to the use defined in Class B1 of the schedule of the Town and Country Planning (use classes) Order 1987

6. The building shall not be occupied until the vehicle parking spaces have been marked out in accordance with the approved drawing. The spaces shall thereafter be kept continuously available for parking

- 3.2. The reasons for the conditions are, respectively, for reasons of clarity and to ensure appropriate development for this site: and to ensure that the development is provided with adequate parking.

4.0 The existing situation

- 4.1. The applicant has let the building for many years to a variety of parties who have undertaken their business in a timely fashion whilst using the hardstanding for vehicle parking as per the original permission.
- 4.2. The current occupier runs a health and wellbeing practice from the property in the manner shown on drawing MLP/02 with parking provision for staff and patrons broadly as per MLP/02.

- 4.3 Recently the Council's Compliance Officer visited the site and noted that the application property was not occupied as an office within Class B1 (now E). As such there was a technical breach of the 1992 planning permission and in particular condition 3. The letter dated 18th December 2024 stated, inter alia:

(d) Material change of use of land from light industrial to sports massage and Therapy The office (as shown on the approved plan for planning permission 43203) was being used for a sports massage and therapy business "Ocean Sports Therapy". The change of use of the building to a sports massage and therapy business requires the benefit of planning permission and no such permission exists. You are therefore requested to cease the use of the building as a sports massage and therapy business and return the building to its authorised use within 28 days of the date of this letter.

- 4.4. In a subsequent email from the Compliance Officer of 20th December 2024 it was stated:

You weren't aware of the need for planning permission for this and would like to apply. I advised that I didn't see any insurmountable issues from a planning policy perspective with this. You advised you were going to speak with David at Martin and Pole to progress this and will update me after the Christmas break.

- 4.5. Plainly there is an error in the initial letter since there has never been a permission for "light industrial" use and indeed this function has never pervaded. This aside the positive tone of the subsequent email is one on which the applicant relies and may reasonably expect officer level support for the proposed variation.

5.0 The application of relevant planning policy

- 5.1. The Officer will be conversant with the key aspects of Framework policy which state:

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 (57).

- 5.2. It is also important to consider whether a planning condition is unreasonably restrictive and the Framework 24 states:

Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so (55).

- 5.3. Practice Guidance also specifically refers to the use of planning conditions and the relevant aspects are:

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 (001).

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 6 tests for conditions.

The 6 tests must all be satisfied each time a decision to grant planning permission subject to conditions is made (004).

Clear and precise reasons must be given by the local planning authority for the imposition of every condition (023).

- 5.4. The other important aspects of NPPF24 in so far as they relate to supporting a prosperous rural economy are as follows :

Planning policies and decisions should enable:

- (a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed, new buildings;*
- (b) the development and diversification of agricultural and other land-based rural businesses;*
- (c) sustainable rural tourism and leisure developments which respect the character of the countryside; and*
- (d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship (88).*

Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist (89).

- 5.5. These are plainly policies of positive intent and their recent publication enables significant weight to be attached to them in so far as they post-date the development plan.
- 5.6. Policies of the adopted and saved development plan comprise the Core Strategy (2010) and the Managing Development Delivery DPD (2014). Together they are over 10 years old and are post-dated by successive statements of national planning policy.
- 5.7. The relevant policies are:

CP1 and CC01 - Sustainable development and the presumption in favour of sustainable development
CP7 and TB23 - Biodiversity
TB21 - Landscape character
CC07 - parking provision
CP6 - managing travel demand
CP11 - Proposals outside of the development limits
- 5.8. The key planning policy is CP11 where the principle of resisting development in the countryside sets out a number of exception which include, as sub-category 3, the reuse of buildings. This is post-dated by NPPF24 88 (a) and (b) clearly state that the sustainable growth of “*all types* of business in rural areas” (my emphasis) should be encouraged and this includes the “conversion of existing buildings”. Plainly this process has been commenced by dint of the 1992 permission and there is no basis for the initial requirement to “cease the use of the building as a sports massage and therapy business and return the building to the authorised use within 28 days”. This statement lacks a basic understanding of the policies of the development plan and the 2024 Framework.
- 5.9. The fact is that the use of the building is wholly planning policy compliant with both development plan and national policy and there is no basis for departure from these policies of positive intent. There is no definition of that which constitutes a rural enterprise and the current occupier fulfils the objective of planning policy in employment and enterprise and, in so doing, is an appropriate use of the building in a rural area.

- 5.10. On the matter of travel demand (CP6) regard needs to be given to Framework24 where the position and approach is clearly set out at paragraph 89. The fact is that those travelling to and from the site will not have ready access to public transport although cycling and walking may be an option which could be exercised, subject to distance limitations.
- 5.11. The effect on biodiversity (TB23 and CP7) are ones which are constant and the use of the premises as an alternative to the lawful position is unchanged. There is no legislative requirement for BNG. The same may be said of landscape impact (TB21) where there is no material change in effect either in use or the related parking areas. As such there is no prima face conflict with development plan or national planning policy.
- 5.12. In terms of parking provision, the matter is constant and the appendix to the Core Strategy does not make reference to Class E which was enacted more than 4 years ago. The provision is adequate.
- 5.13. Setting aside that the proposal is planning policy complaint, the key considerations in applying these policies are as follows:
- Is there justification for limiting the use within Class E?
 - Does the current use reflect an appropriate enterprise in this location?
 - Does the hardstanding provide adequate parking?
 - What weight should be afforded to the fall-back position?
- 5.14. NPPF24 at paragraph 55 is “planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so”. On this basis, condition 3 of the 1992 permission in imposing a limitation is contrary to the provisions of Class E which was enacted to confer freedom for users to exercise alternative commercial operations.
- 5.15. Class E allows for the following:
- E(a) Display or retail sale of goods, other than hot food*
 - E(b) Sale of food and drink for consumption (mostly) on the premises*
 - E(c) Provision of:*
 - E(c)(i) Financial services,*
 - E(c)(ii) Professional services (other than health or medical services), or*
 - E(c)(iii) Other appropriate services in a commercial, business or service locality*
 - E(d) Indoor sport, recreation or fitness (not involving motorised vehicles or firearms or use as a swimming pool or skating rink,)*

E(e) Provision of medical or health services (except the use of premises attached to the residence of the consultant or practitioner)

E(f) Creche, day nursery or day centre (not including a residential use)

E(g) Uses which can be carried out in a residential area without detriment to its amenity:

E(g)(i) Offices to carry out any operational or administrative functions,

E(g)(ii) Research and development of products or processes

E(g)(iii) Industrial processes

- 5.16. In the case of the current occupier E(e) is referred and the lawful use as per the 1992 permission is within E(g)(i). In light of national planning policy and having regards to the location it would be appropriate to restrict E(a), (b) and C(iii) and this is a matter for consideration by the local authority. In saying this and in the interests of resolving the current position, the proposal is for a limiting condition within E(e) and E(g)(i)(ii) and (iii), the Class B use which was lawful under the 1992 permission.
 - 5.17. The matter of the appropriateness of the use in this location is one which is set out above. There is no definition or limitation on that which comprises a “rural enterprise” and the use is, on this basis, wholly policy compliant. Those making use of the health services will, in all likelihood, be patients known to the practitioners and would travel to the premises wherever they are located.
 - 5.18. In respect of parking provision and any effect - visual and in respect of access - the position is unchanged save for the fact that it is not formally laid out as is the requirement of condition 6. It is available and always has been to satisfy the reasonable requirements of the occupiers and visitors.
 - 5.19. In this regard to all of these matters and any other development management considerations, it is important to afford weight to the fall-back position. This is one which is both lawful and probable in so far as the 1992 permission remains extant and there is a commercial interest in letting the building. The effects in transportation, parking and on the landscape are entirely constant with the current use and there is no basis to limit the weight to be afforded to the fall-back position.
- 6.0 The variations sought**
- 6.1. The applicants seek the following variation of conditions 3 and 6 as related to the original planning permission granted under reference 39571. They are as follows:

The use of the building hereby permitted shall be limited to the use defined in Class E(e) and (g) (i), (ii) and (iii) as defined by the Town and Country Planning Use Classes Order 1987 (as amended)

The vehicle parking spaces as shown on drawing MLP/02 shall be retained for this purpose at all times

- 6.2. As detailed in national policy and guidance requires that the conditions must be:

1. *Necessary*
 2. *Relevant to planning*
 3. *Relevant to the development to be permitted*
 4. *Enforceable*
 5. *Precise*
 6. *Reasonable in all other respects*
- and that all 6 tests are satisfied in each case

- 6.3. The applicant's appraisal considers that the revised condition (or an agreed wording) satisfies these tests and should prevail.

Other material considerations

- 6.4. There are no other material planning considerations which would justify an exception to the approach set out in Practice Guidance and the Framework. As such the application falls to be determined on its individual merits and for the reasons set out above it is acceptable.

7.0 Summary - the planning balance

- 7.1. By way of summary, the following matters are set out:

- The proposed variation of conditions 3 and 6 in so far as they relate to use of the building within limited Class E and the provision of parking, is detailed in this Statement. This application is submitted at the behest of the Council's Compliance Officer and arises from the current use of the building within Class E(e). Specifically this includes the provision of medical or health services which is outside of the limited use set out by condition 3 on the 1992 permission. The parking is provided in the manner shown but has not been formally marked out as is required by condition 6.
- Class E was enacted in 2020 and confers freedom to operate a range of commercial uses. The limiting condition is outside of this freedom and there are no special circumstances to limit the use save for retail and hot food. This is an important material consideration in the determination of this application.

- Parking provision is readily available and there is no requirement for it to be formally laid out as has been the case since the enactment of the 1992 permission. This technical matter should be agreed.
- 7.2. On the basis of the foregoing the proposal remains as sustainable development and the application should be approved.