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The Head of Planning
Hampshire County Council
The Castle
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SO23 8ZB

FAO Fay Eames

31 October 2012

Dear Sir/Madam

Section 73 application to remove condition 6 of planning approval 12/01011/HCS dated 1st October 2012 at Barton Yard, Wield, Alresford.

We hereby submit an application to remove condition 6 of the above consent which granted planning permission for the "erection of replacement building for use as part of the lawful use of the site as a site for waste/scrap metal sorting and recycling end of life vehicles". The condition subject to this application states that:

Within 3 months from the date of this permission a two metre high fence is to be erected on the eastern and northern boundaries of the site and maintained for the duration of the development. Details specifying the material and the colour of the fencing are to be submitted to the Waste Planning Authority for approval within one month from the date of this permission and implemented as approved.

We identified our concerns with the condition prior to the permission being granted but made the decision not to challenge it to the extent that it could jeopardise the granting of the planning permission. To justify this proposal we make specific reference to the Conditions Circular 11/1995 which sets out the tests for planning conditions. It states that all conditions must be:

- i. necessary;
- ii. relevant to planning;
- iii. relevant to the development to be permitted;
- iv. enforceable;
- v. precise; and
- vi. reasonable in all other respects.

We submit that the condition fails all of these tests. Whilst there is inevitably cross over between the different categories, it is helpful to explain why it fails each test one by one. Our concerns are detailed below:

Necessary

The reason for the condition is given as to “clearly delineate the boundaries of the site and to prevent encroachment of the site activities into the countryside”. The red line of the application site clearly defines the application boundary in relation to the existing buildings, roads and other features on the site. This red line mirrors that approved in application 10/00931/HCS for a certificate of lawful use on the site and which delineates the lawful site. Such a red line is self enforcing, as with any other planning application. Should any use be carried out outside of the lawful site, then the County Council have full powers to enforce against an unlawful change of use of agricultural land. Given that the approved plan is to scale, there should be no difficulty in ascertaining whether there has been any expansion of the site. The use of this condition therefore replicates this existing control which circular 11/1995 specifically advises against.

Furthermore much of the boundary subject to this condition, especially the eastern boundary, is delineated by existing fencing (some of which isn't 2m in height but not far short) and bunds which will prevent any development beyond them. These are as much a barrier to development as a 2m high fence would be. There is no logical reason why a 1.8m high fence should be replaced by a 2m high fence in the same location. Generally speaking though, there is no need for the condition to do the job it is *reasoned* for.

Relevant to Planning

Whilst the reason for the condition states that it is to prevent encroachment into the countryside, the reason for approving the application states that “additional landscape mitigation measures have been proposed to enhance those the landscape character of the area” (sic.) Policy DC3 (Landscape and Townscape) of the Hampshire Minerals and Waste Core Strategy is quoted. Despite these references, the reason for the condition makes no reference to landscape amenity, an issue of visual impact rather than encroachment. No other policy support for the condition is offered.

Paragraph 6 of Circular 11/1995 states that “Conditions should normally be consistent with national planning policies as expressed in Government Circulars, Planning Policy Guidance notes, Minerals Policy Guidance Notes and other published material. They should also normally accord with the provisions of development plans and other policies of local planning authorities”.

The basic test for a condition is whether the planning permission could be approved without it. In this case, given that there is no relevance to planning, we suggest that it is extremely unlikely that the Council would have refused this application if condition 6 was not included.

Relevant to the development permitted

The permission is for the erection of a new building yet the wording of the condition requires the fence to be constructed within 3 months of the permission, regardless of whether the planning permission is implemented. The reason for the condition makes no reference to the building approved by the application. Paragraph 25 of Circular 05/1995 states that “it is not sufficient that a condition is related to planning objectives (something we disagree with anyway for the reasons given above); it must also be justified by the nature of the development permitted or its effect on the surroundings”.

By the wording of the condition, there is an expectation that the fence should be approved and erected before the consent is implemented. This is equally relevant in considering whether the fence is necessary or enforceable.

Enforceable

The condition is unenforceable until the applicant chooses to implement his consent. Until that point, there is no implemented planning permission and therefore the council cannot

rely on or enforce the condition requiring the erection of the fence. In normal circumstances, if a planning permission has not been implemented it would be impossible to breach a condition relating thereto, although there is nothing in planning law itself to prevent a local authority actually serving an enforcement notice under sec.172 alleging breach of such a condition. The position is clearer in terms of Breach of Condition Notices, as sec. 187A(2) of the 1990 Act provides that such a notice may only be served on a person **who is carrying out or has carried out development** subject to a planning permission.

Precise

The condition refers to erecting a fence on the eastern and northern boundaries. Over 30m of the 'eastern' boundary runs immediately alongside the existing building at the front of the site. The condition will require a 2m high fence along this boundary immediately next to the building. This is certainly unnecessary and it is unduly costly and onerous on the applicant. However, the wording of the condition does not allow any flexibility in the decision maker concluding that a 2m fence is not required along this part of the site. The condition is therefore imprecise and, as currently worded, requires at least 30m of fencing which would serve no practical use.

Furthermore, the condition requires the fence to be "*maintained for the duration of the development*". There is no definition of what constitutes the duration of the development, it could well be considered the time that the development is being carried out. Therefore, once the development is complete, the fence could then be removed. The requirement for maintenance is also imprecise.

Unreasonable

The condition is unreasonable because, even if it is concluded that some boundary treatment is necessary to prevent the expansion of the site into the countryside, the prescriptive demand of a 2m high fence allows for no flexibility for where the boundary is currently clearly defined or where there is no prospect of the boundaries being pushed. A 2m high fence is unreasonable because a lesser fence would achieve the same result even if it is considered that the red line plan is insufficient in achieving this aim on its own.

This application

Section 73 of the Act provides for applications for planning permission to develop land without complying with conditions previously imposed on a planning permission. The local planning authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide the original condition(s) should continue. The original planning permission will continue to subsist whatever the outcome of the application under section 73 and, although this means that the condition remains in perpetuity, we trust that the Council will, in approving this application, assume that the existing consent has effectively been superseded and not insist that condition 6 is complied with. If the Council will not accept this, then this S73 application is worthless.

For the reasons given above, we submit that condition 6 of application 12/01011/HCS should be removed **in its entirety**. Notwithstanding this conclusion, in the event that the Council consider that a replacement condition is required, then we suggest that it is in the form of a pre-commencement condition, that the boundary treatment is not prescribed in the condition and that the condition is sufficiently flexible to allow the retention of the existing boundary treatment wherever possible to prevent any unnecessary costs. However, we reiterate that we believe any condition for boundary treatment to delineate the site boundary is ultra-viries and unnecessary.

Please accept this letter as part of the formal planning application as a **Planning Support Statement**. In addition to this document, we submit the following information electronically:

- Application form;
- Site location plan @ 1:1250

A cheque for £170 will follow by post.

Please contact the writer should you require any additional information.

Yours faithfully

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enc.
cc. Graham Lailey

