CM/P21-2747

13 June 2023

Mr S. Smith
Team Leader – North
Wiltshire Council
Monkton Park
Chippenham
Wiltshire,
SN15 1ER

BY EMAIL ONLY

Dear Simon,

Section 73 Application to Remove Condition 16 Pursuant to Full Planning Permission ref: PL/2022/05505 for Land at Methuen Park, Chippenham

This letter is prepared by Pegasus Group, on behalf of Kellaway Building Supplies Ltd, in support of a submission of an application under s.73 of the Town and Country Planning Act 1990 for the removal or variation of Condition 16 as applied to planning permission for land at Methuen Park (ref: PL/2022/05505).

The application seeks in the first instance to remove, or in the alternative vary the wording of, Condition 16.

The granted description of development is as follows:

> *"Erection of 3 no. Commercial Units (Class E(g)/B2/B8) with Associated Service Yard, Parking and Landscaping"*.

Condition 16 reads as follows:

> *"Notwithstanding the submitted documents and approved plans, no development above slab level shall take place on site until a scheme to demonstrate how the development will achieve the relevant BREAM Excellent Standard, has been submitted to and approved in writing by the Local Planning Authority.*
>
> *A BREEAM As Built Excellent Certificate for the completed development shall be submitted to the Council within 6 months of the occupation of the development hereby approved. Once completed the requirements as set out in the report shall be retained and maintained in the approved form without modification.*

In the event that the site circumstances are deemed such that the costs of complying with BREEAM to an 'Excellent' level would undermine viability of the development, then a lower standard must be clearly justified within a financial viability appraisal carried out by a suitably qualified practitioner. In this case, no development shall commence on site until the financial viability appraisal has been submitted to and approved in writing by the Local Planning Authority.

REASON: In the interests of sustainable development".

Following the receipt of draft planning conditions prior to the application's approval, we made representations to the effect that Condition 16 is unduly onerous and anomalous in relation to other granted consents within the local authority of a similar description of development. The imposed condition would unnecessarily impede the delivery of development.

Section 73 Application for the removal or variation of condition

Section 73 of the Town and Country Planning Act (1990) allows for applications to be made for permission to develop without compliance with condition(s) that have been imposed upon a decision.

Section 73 enables a Local Planning Authority to delete or amend conditions unilaterally so far as these are relevant to the matter at issue. In this instance, there is no overlap with any other condition, nor does the applicant wish to revisit these or the substantive content of the earlier application itself.

Paragraph 55 of the National Planning Policy Framework (2021) sets out clear tests to ensure that conditions imposed are kept to a minimum, citing that they must satisfy all the following tests. Those tests require that a condition is:

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.

We set out in the assessment below that these tests are not considered to be met in full, that the condition should not therefore have been imposed, and that its removal at this time is justified.

Assessment

Having regard to the tests set out in the Framework, Condition 16 is not necessary (Test 1) to bring forward sustainable development, nor is not relevant to the development to be permitted (Test 3) or reasonable in all other respects (Test 6).

Regarding Test 1, insofar as whether the requirement of a BREEAM 'Excellence' certification' is *necessary*, it is considered that the current and recently updated building regulations adequately ensure that all permitted development is constructed to an acceptable standard regarding its sustainability and resource efficiency.

These reflect the government's clear intentions for the levels of sustainability to be achieved in new development and should not be duplicated or extended through planning.

Building Regulation Part L 'Conservation of fuel and power' (approved 2021) introduces measures regarding energy efficiency and carbon reduction. It is understood that the Wiltshire Core Strategy (January 2015) and specifically Policy CP45 sets out the policy precedent regarding the requirement for development to adhere to BREEAM excellency standards, where applicable.

However, as Policy CP45 was adopted well in advance of Building Regulations Part L would have had no consideration for more recent nationally prescribed Building Regulations and is essentially not up to date.

It is therefore considered that the requirements of the condition are not necessary or otherwise reasonable in order ensure sustainable development, the pursuit of which is more appropriately addressed via strict adherence to Building Regulations.

Regarding Test 3, the Framework sets out that a condition must be relevant to the development to be permitted. Failing this, the condition should not be imposed.

As set out below, a comprehensive search of recent development permitted by the Local Planning Authority of a similar description of development to that of Methuen Park finds that historically the Council have not considered the BREEAM excellency standard relevant to the development permitted and as such have applied no such planning condition.

The condition applied in this instance, therefore, appears as an anomaly.

Site Address	LPA Ref.	Proposal	Determined	BREEAM Applied
Former Countrywide Store Site, Bradford Road, Melksham, SN12 8LQ	PL/2021/11498	Erection of 1 No. commercial building.	Granted 06/03/2023	No
Wessington Cabins Ltd, Wessington Avenue, Calne, SN11 0AP	PL/2022/02698	Erection of 5 no. E Class Commercial Units.	Granted 27/05/2022	No
Manor Farm, Wadswick, Box, Corsham, SN13 8JB	PL/2022/08662	Change of use of part of agricultural storage building for commercial (B8 Use) – Retrospective	Granted 04/04/2023	No
Ivy Mill Farm, Steeple Ashton Road, Edington, Westbury, BA13 4NL	PL/2022/02498	Change of use of 3 existing agricultural buildings to commercial use, specifically falling within use Class B8.	Granted 03/02/2023	No
Fairholme Farm, Dog Trap Lane, Minety, Malmesbury, SN16 9PW	PL/2022/09580	Change of use from an agricultural building to Class B8 commercial use.	Granted 07/02/2023	No
Heaven Scent, The Old Coal Yard, Station Road, Holt, BA14 6QD	21/01207/FUL	Change of use of land from storage and distribution to commercial use E(g)(iii)	Granted 14/02/2023	No
Upper Chedglow, Malmesbury, Wiltshire, SN16 9HA	21/00083/FUL	Change of use of two farm buildings from agriculture to a mixed use of agriculture, butcher and for commercial use (E(g), B2 and B8) uses.	Granted 02/07/2021	No

Snarlton Farm, Melksham, SN12 7QP	20/09720/FUL	Change of use of agricultural building to commercial workshops.	Granted 05/03/2021	No
Stanley Bridge Farm, Stanley, Chippenham, SN15 3RQ	20/09087/FUL	Convert Existing Agricultural Storage Buildings to a Commercial Storage Building - Use Class B8.	Granted 22/01/2021	No
Whitelands Farm, Day's Lane, Kington Langley, Chippenham, SN15 5PD	20/04521/FUL	Proposed farm diversification scheme comprising new agricultural buildings, demolition of some older agricultural buildings, change of use and extension of existing farm buildings to offices and commercial storage	Granted 02/10/2020	N/a – Decision not on file.
Land Adjacent Mitsubishi Motors, Western Way, Melksham, SN12 8BZ	20/03604/FUL	Erection of two new commercial buildings (Use Class B1) and associated external works.	Granted 28/08/2020	No

Table 1. LPA Search Results[1]

The applicant's firm expectation is that Condition 16 should simply be removed, as it is noted the Council has done in the case of permissions on which a very similar requirement has been imposed previously. For instance, Outline planning permission 14/12118/OUT, relating to a mixed-use development at Rowden Park, was subject of a later s.96A non-material amendment to remove Condition 5 (requiring, *inter alia,* evidence of BREEAM 'Very Good' standards), since which time the Building Regulations have become significantly more demanding.

However, should the Council be unwilling to remove the condition in its entirety, the removal of the requirement to demonstrate accordance with the 'BREEAM As Built Excellent Certificate' from the condition wording may also be acceptable.

[1] A search of Wiltshire's Planning History Database under the Parameters of 'Commercial' and 'Determined between 01/04/2020-01/04/2023' was used to collate the table results. Not all results are included above due to the relevancy of development.

Assurance that the development will however strictly accord to the Building Regulations, including Part L 'Conservation of fuel and power' may be an acceptable alternative requirement if a specific resource efficiency requirement is deemed necessary.

In this case, the draft variation of condition wording would read as follows:

> *Condition 16: "Notwithstanding the submitted documents and approved plans, no development above slab level shall take place on site until a written statement to demonstrate how the development will accord to Building Regulation Document 'Conservation of fuel and power: Approved Document L' (February 2023), or any later revision thereafter, has been submitted to and approved in writing by the Local Planning Authority."*

It is considered that the above condition would meet the relevant tests as set out in paragraph 55 of the NPPF (2021) and not be considered to unduly impede the delivery of sustainable development.

Notwithstanding, it should be noted that the application expressly seeks the wholesale removal of Condition 16 in the first instance.

Should you wish to discuss the application, please do not hesitate to contact me.

Yours sincerely,



Chris Marsh
Associate Planner
chris.marsh@pegasusgroup.co.uk

Enc.