

S73 Planning Statement

VARIATION OF CONDITION 3 OF
PLANNING PERMISSION
20200117



**SECTION 73
PLANNING APPLICATION BY:
MRS C.E TARR**

RELATING TO:

**HORNS OAK FARM
HORNS OAK ROAD
MEOPHAM
GRAVESEND
KENT
DA13 0BX**



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1. PURPOSE OF SECTION 73 APPLICATION

1.1. This Planning Statement has been prepared on behalf of Mrs C.E Tarr in support of a Section 73 planning application for the variation of condition 3 of planning permission **20200117** which approved the following development at Horns Oak Farm Horns Oak Road Meopham, on 31 March 2020:

“Retention of change of use from barn to B1 (office) and B1C (workshop) for the design and production of sustainable fibre optic and low energy LED lighting.”

1.2. Condition 3 restricted the permission for solely for the benefit of the applicant and her immediate family as outlined below:

3) This permission shall relate solely for the benefit of the applicant and her immediate family only unless otherwise agreed in writing by the Local Planning Authority.

1.3. The purpose of this submission is to vary the condition to remove the personal restriction of the planning permission and to apply it to the owner of Horns Oak Farm instead. The suggested variation to the condition is outlined below:

3. This permission shall relate solely for the benefit of the owners of Horns Oak Farm¹ unless otherwise agreed in writing by the Local Planning Authority.

¹ Exact wording to be agreed with Council.

2. PLANNING HISTORY:

(i) Review of 2020 Permission

- 2.1. Planning permission **20200117** approved the barn as a B1 (office) and B1c (workshop) which has now been replaced by Class E(g) under the Use Classes Order updates from 1 September 2020. The planning unit of the site was defined by the below red line:

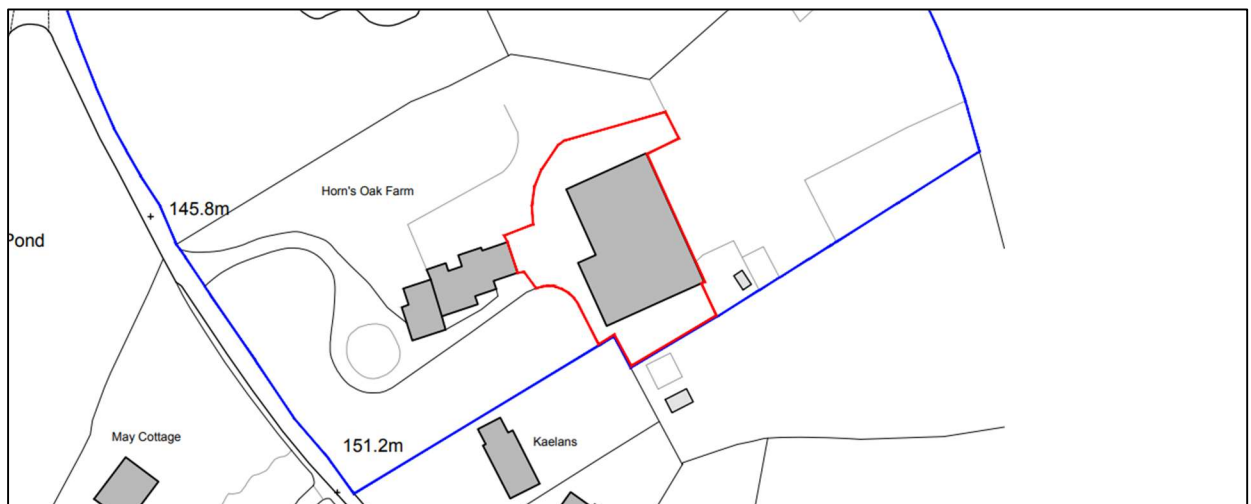


Figure 1: Planning unit of site.

- 2.2. The following condition, which is subject of this application, was attached to the permission which restricted the use of the building for the applicant or her immediate family only.

3. This permission shall relate solely for the benefit of the applicant and her immediate family only unless otherwise agreed in writing by the Local Planning Authority.
- Reason: To ensure control over any changes to future business use to allow assessment of the potential impact on amenity in accordance with Policy CS19 of the Core Strategy 2014.

Figure 2: Condition of 2020 planning permission.

- 2.3. The origin of the condition was based on amenity impact as well as highways safety, with the following extract from the delegated report outlined below:

Highway Development Management Officer

"Given the site has been operational for a few years, I doubt on highway issues a Planning Inspector would accept an objection on highway grounds at least in isolation as the current use has stood the test of time. However, B1 uses can result in a variety of different users and traffic generation, both in terms of numbers and size of vehicles. I would therefore suggest if you are minded to approve that the use should be specific to the current occupier only".

- 2.4. There was very little further justification for the condition other than this request by the Highways Officer.

3. THE APPLICATION SITE AND SURROUNDING AREA:

- 3.1. The application site is located on the northern side of Horns Oak Road, approximately 80m south from the junction with Whitehill Road. In terms of position, it is 1.1km south-east of Meopham Green.
- 3.2. The site comprises Horn Oak Farm, a large detached dwelling set back from the highway behind mature landscaping. Vehicular access from the highway passes along the southern flank of the property and provides access to the application building, which is east of Horns Oak Farm.
- 3.3. The building is a large detached structure consisting of traditional construction and appearance. Around the building, there is formal parking to the northern and western flanks. The ground floor of the building consists of two sections. One half of the building comprises stables / equine use with associated hay, tack and equipment stores. The other half of the ground floor of the building is used by Absolute Action and comprises office and workshop for the design and production of sustainable fibre optic and low energy LED lighting and equipment. The ground floor commercial use consists of an entrance hall, main office and workshop. Other ancillary elements include a kitchen, store and toilets. There is also a first floor to the building which comprises a first floor office. Above the workshop is a self-contained 2no. bedroom flat within the applicant's ownership.
- 3.4. The site is located in the Metropolitan Green Belt and Kent Downs National Landscape. However, the building is not listed or locally listed, nor situated within a Conservation Area.

4. PLANNING POLICY & GUIDANCE:

(i) Planning Policy

4.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 Act states that applications should be determined in accordance with the development plan, unless material considerations indicate otherwise.

4.2. Policy CS19 of the Gravesham Core Strategy is specifically referenced in condition 3 of planning permission 20200117. This states:

New development will be visually attractive, fit for purpose and locally distinctive. It will conserve and enhance the character of the local built, historic and natural environment, integrate well with the surrounding local area and meet anticrime standards. The design and construction of new development will incorporate sustainable construction standards and techniques, be adaptable to reflect changing lifestyles, and be resilient to the effects of climate change. This will be achieved through the criteria set out below:

- New development will be located, designed and constructed to:
- safeguard the amenity, including privacy, daylight and sunlight, of its occupants and those of neighbouring properties and land;
- avoid adverse environmental impacts from pollution, including noise, air, odour and light pollution, and land contamination; and
- not pose an unacceptable risk or harm to the water environment, including the quality and/or quantity of ground waters, surface waters, wetlands and coastal water systems;

(ii) National Planning Policy Framework (NPPF) 2023

- 4.3. Paragraph 55 of the NPPF states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of planning conditions.
- 4.4. Paragraph 56 states that 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.

(iii) Planning Practice Guidance (PPG)

- 4.5. Paragraph: 015 Reference ID: 21a-015-20140306 of the PPG states:

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

Planning permission usually runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may 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 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.

(iv) Circular 11/95: Use of conditions in planning permission

4.6. The following paragraphs are relevant to this application:

36. Even where a condition would not be so unreasonably restrictive as to be ultra vires, it may still be so onerous that as a matter of policy it should be avoided. Any condition which would put a severe limitation on the freedom of owners to dispose of their property, or which would obviously make it difficult to finance the erection of the permitted building by borrowing on mortgage, should be avoided on these grounds.

93. Unless the permission otherwise provides, planning permission runs with the land and it is seldom desirable to provide otherwise. There are occasions, however, where it is proposed exceptionally to grant permission for the use of a building or land for some purpose which would not normally be allowed at the site, simply because there are strong compassionate or other personal grounds for doing so. In such a case the permission should normally be made subject to a condition that it shall enure only for the benefit of a named person-usually the applicant (model condition 35): a permission personal to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company. This condition will scarcely ever be justified in the case of a permission for the erection of a permanent building.

5. PLANNING MERITS & CONCLUSION:

- 5.1. The purpose of the application is to vary condition 3 to remove the applicant and her family from the condition and to enure the benefit planning permission to the owners of Horns Oak Farm instead. This will allow the applicant to dispose of the property and the lawful commercial use together.
- 5.2. Although the proposal removes the personal restriction to the applicant and her family, and applies it to the land, retaining the restriction of the lawful use to the owners of Horns Oak Farm will allow the control of potential amenity impact and highways safety. This is because of the proximity of the commercial use to the dwelling at Horns Oak Farm and the shared vehicular access. This proximity will restrict noise, disturbance and vehicular movements to the commercial use if it is retained for the benefit of the owners of Horns Oak Farm. This will also preserve neighbouring amenity.
- 5.3. The condition will therefore continue to serve its original purpose.
- 5.4. It is therefore requested that the condition is varied, and planning permission is granted.