

Your ref: PP-05495811
Our ref: VH/1044

12 October 2016

Planning Department
Ribble Valley Borough Council
Council Offices
Church Walk
Clitheroe
Lancashire
BB7 2RA

SUBMITTED VIA THE PLANNING PORTAL: REF. PP-05495811

Dear Sir/Madam

LAND AT MALT KILN BROW, CHIPPING (PERMISSION REF.APP/T2350/W/15/3119224 & APP/T2350/Y/15/3119225): APPLICATION FOR THE REMOVAL OF CONDITION 60 & CONDITION 8 'HYDRO SCHEME'

I am writing on behalf of my client, SCPI Bowland Limited, in relation to Condition 60 of planning permission APP/T2350/W/15/3119224 and Condition 8 of listed building consent APP/T2350/Y/15/3119225. Permission was granted (via appeal) on 18 April 2016 for:

"Full planning permission for works and change of use to the Grade II listed Kirk Mill to create a hotel (18 bed, use class C1) and a bar restaurant (use class A3), works to the barn building to create seven holiday cottages (use class C1), construction of a hotel and spa (20 bed use class C1), wedding venue (use class D1), kids club (use class D1) and trailhead centre (use class D1 and A3), change of use of Malt Kiln House from residential to use class C1, construction of a new cricket pavilion (Sui Generis), demolition of the group of derelict factory buildings.

Outline planning permission for 60 residential dwellings split over 2 sites with a maximum of 56 and 4 units each, with all matters reserved except for access."

And Listed Building Consent for:

"The works proposed are a change of use of the Grade II listed Kirk Mill to create a hotel (18 bed) and bar/restaurant. Works comprising partial demolition and extension of Kirk Mill including demolition of the later addition to the east of the Mill and erection of the new extension built on the same footprint in traditional stone to match the existing Mill; removal of further alterations to the façade to restore the historic character of the building."

JUSTIFICATION FOR THE REMOVAL OF THE CONDITIONS

This application seeks to remove Condition 60 (Permission Ref. 3119224) and Condition 8 (Permission Ref. 3119225) of the permissions, which state:

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"No part of the development shall commence until details of the 'Hydro Scheme' (as referred to in page 139 of the Design & Access Statement hereby approved) has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in strict accordance with the approved details."

The submitted Design and Access Statement (5 Plus Architects, March 2014), as referenced within the Conditions, includes at Section 7.10 'Hydro Scheme' the following text:

"The hydro scheme does not formally form part of the leisure complex for which planning permission is sought.

The team have however investigated the potential to include a hydro scheme element to the proposals which take advantage of the existing river network and mill pond.

In summary it would seem feasible that a hydro scheme could play a part in servicing the leisure complex.

The plan adjacent indicates the path that the hydro scheme could follow should the scheme be approved."

It is clear that the application did not seek permission for a Hydro Scheme and the reference to a Hydro Scheme in the Design and Access Statement is purely indicative.

Paragraph 203 of the National Planning Policy Framework (NPPF) advises that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of planning conditions and NPPF paragraph 206 states that planning conditions should only be imposed where they are:

1. necessary;
2. relevant to planning and;
3. to the development to be permitted;
4. enforceable;
5. precise and;
6. reasonable in all other respects.

The below table assesses Conditions 60 and 8 against these principle, to demonstrate why the conditions do not meet the six tests.

Test	PPG Key Questions	Assessment of Condition 60 & Condition 8
Necessary	<p>Will it be appropriate to refuse planning permission without the requirements imposed by the condition?</p> <ul style="list-style-type: none"> • A condition must not be imposed unless there is a definite planning reason for it, ie it is needed to make the development acceptable in planning terms. • If a condition is wider in scope than is necessary to achieve the desired objective it will fail the test of necessity 	<p>There is not a definite planning reason for including Conditions 60 & 8 on the planning and listed building consents, respectively. The requirement to submit details of a Hydro Scheme, for which there is no certainty, in advance of the commencement of development is not required to make the development acceptable in planning terms. Permission for a Hydro Scheme was not sought by the applications and the scheme is referenced merely for information as a development which could potentially come forward in the future.</p>

Test	PPG Key Questions	Assessment of Condition 60 & Condition 8
		<p>As permission for the Hydro Scheme has not been sought through the applications, the proposed conditions are wider in scope than is necessary to achieve the desired objective (i.e. the development applied for).</p> <p>The conditions are not necessary to the permission.</p>
Relevant to planning	<p>Does the condition relate to planning objectives and is it within the scope of the permission to which it is to be attached?</p> <ul style="list-style-type: none"> • A condition must not be used to control matters that are subject to specific control elsewhere in planning legislation (for example, advertisement control, listed building consents, or tree preservation). • Specific controls outside planning legislation may provide an alternative means of managing certain matters (for example, works on public highways often require highways' consent). 	<p>The conditions do not relate to planning objectives and are not within the scope of the permission to which they are attached.</p> <p>The conditions require details of the Hydro Scheme to be submitted to and approved by the Council in advance of the commencement of development. The application did not apply for permission for a Hydro Scheme and therefore the conditions would effectively approve development which has not been subject to a planning application.</p>
Relevant to the development to be permitted	<p>Does the condition fairly and reasonably relate to the development to be permitted?</p> <ul style="list-style-type: none"> • It is not sufficient that a condition is related to planning objectives: it must also be justified by the nature or impact of the development permitted. • A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development. 	<p>The conditions do not fairly and reasonably relate to the development permitted.</p> <p>The condition is not justified by the nature or impact of the development, rather the condition seeks to grant planning permission for a separate development proposal (outside of the application boundary) which is not part of the application.</p>
Enforceable	<p>Would it be practicably possible to enforce the condition?</p> <ul style="list-style-type: none"> • Unenforceable conditions include those for which it would, in practice, be impossible to detect a contravention or remedy any breach of the condition, or those concerned with matters over which the applicant has no control. 	<p>The applicant has not sought permission for a Hydro Scheme as part of the consented permission and therefore the inclusion of the Conditions, which would essentially grant planning permission for a development which has not obtained planning permission, is a matter which the applicant has no control over.</p>

Test	PPG Key Questions	Assessment of Condition 60 & Condition 8
Precise	<p>Is the condition written in a way that makes it clear to the applicant and others what must be done to comply with it?</p> <ul style="list-style-type: none"> Poorly worded conditions are those that do not clearly state what is required and when must not be used. 	N/A
Reasonable in all other respects	<p>Is the condition reasonable?</p> <ul style="list-style-type: none"> Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness. Unreasonable conditions cannot be used to make development that is unacceptable in planning terms acceptable. 	<p>The conditions are not reasonable as they place unjustifiable and disproportionate burdens on the applicant.</p> <p>The development is acceptable regardless of the conditions and therefore the removal of the conditions would not have any impact on the planning consent.</p>

SUMMARY

In summary, the inclusion of Conditions 60 and 8 have no direct impact upon the acceptability of the planning permission. The conditions do not meet the six tests which planning conditions are required to meet and, fundamentally, permission for the Hydro Scheme was not applied for as part of the application and therefore its development should not be sought by the Condition. As such, it is respectfully requested that Conditions 60 and 8 are removed from the permissions so as not to delay the development coming forward.

I trust that the justification set out within this letter is sufficient to enable you to permit the removal of Condition 60 of planning permission APP/T2350/W/15/3119224. Should you have any further queries, please do not hesitate to contact me.

Yours faithfully



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Enc. Application Fee Cheque (£195)
Application Form