

Application for a Removal of Condition; Supporting Statement. Condition No 5

Planning Consent Reference CEF/2023/0233

Property; Former HSBC Property, 26 Well Street, Cefn Mawr, Wrexham, LL14 3AE.

Condition No 5

Wording of the Condition

"No part of the development shall commence until a detailed Net Biodiversity benefit plan has been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented in full prior to the first occupation of the development, and shall thereafter be implemented in full prior to the first occupation of the development, and shall thereafter be retained for the life time of the development.

Requirement of Planning Conditions

Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum and only used where they satisfy the following tests.

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.

Each of these tests need to be satisfied for a condition to be enforceable.

In respect of condition 5 of planning consent CEF P/2023/0233 this is clearly not the case and the condition should be removed. We explain and explore this conclusion as follows;

1. The condition is clearly not necessary. As part of the planning application process a bat survey was commissioned following requests from the Local Authority. This was prepared by Switch ecology at a significant expense and its findings and recommendations were accepted by the Local Authority. Indeed condition 8 of the planning consent has enforced a further audit of the ecology recommendations made in this report. It is quite clear from this that at the time the planning consent was considered;
 - a) Only a bat survey was deemed necessary in terms of the ecological impact of the development, and
 - b) The LPA accepted the contents and recommendations of the ecology report that was prepared to secure the planning consent.

It therefore follows that the requirement of condition 5 to enforce further ecology appraisals on this development is not necessary.

2. Net biodiversity gain legislation does not come into force for small developments such as this until the 12th April 2024. It is therefore unreasonable to impose such requirements on this applicant when it is not expected of the planning system. As it stands this development is on the very wafer thin margins of being viable. To impose further unnecessary costs or the applicant will in this case result in the development not proceeding and the rot to an important building in the conservation areas will continue. Such a result cannot be the intention of the LPA here. We re-emphasize therefore that it is unreasonable to impose net biodiversity gain costs onto the applicant when National Legislation and policy does not require it, and when it would result in the development being shelved.
3. If national planning legislation and policy does not require any net biodiversity gain in this situation at this time it is clearly not relevant to planning nor to the development to be permitted.
4. We can conclude that when a detailed ecology report has been asked for and approved by an LPA as part of a planning application, and where the resulting consent imposes a condition to audit the recommendations of that report and where National legislation and policy do not ask for further ecological work in respect of similar developments and where such ecological work could affect the whole viability of a project then the condition imposed in the consent and discussed here is not reasonable and should be removed.
5. Extremely relevant to this application is consent CEF P/2020/0266 which was the previous planning consent for this building which sought to create seven flats here including a large rear extension. This consent which can be started right now included no provision for net biodiversity gain as is sought here. Clearly this disparity and inconsistency in approach reinforces the fact that condition 5 here is unreasonable, unnecessary and not relevant to planning nor the development.

Further Government guidance on the use of conditions are as follows:

“The Use of Pre-Commencement Conditions

When can pre-commencement be used that prevent any development until the requirements of the condition have been met?

Care should be taken when considering using pre-commencement conditions that prevent any development authorised by the planning permission from beginning until the condition has been complied with. This includes conditions stating that ‘no development shall take place until....’ or ‘prior to any works starting on site....’

Such pre-commencement conditions should only be used where there is a clear justification, which is likely to mean that the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would otherwise be necessary to refuse the whole permission.

A pre-commencement condition that does not meet the legal and policy tests may be found to be unlawful by the courts and therefore cannot be enforced by the local planning authority if it is breached”.

We can state clearly that Condition No 5 of this consent has no clear justification, and that its requirements are not fundamental to the development being permitted here. It will therefore be found unlawful if tested in the courts.

Signed Michael Schmid

Dated 25 March 2024