

Town and Country Planning Act 1990 Section 73

Application to Remove Conditions Attached to Planning Application P/2018/1035

THE OLD FOX, BANGOR ROAD, EYTON, WREXHAM, LL13 0YD

Approval is sought for the removal of conditions 4, 6 and 7 all attached to planning permission P/2018/1035 granted on 17 January 2019.

With regard to **Condition 4**, the provision of a footway along the site road frontage resulted from a site meeting between the Applicant's architect and the Highway Authority's Highways Development Control Officer (HDCO) as part of the application process.

In requesting the provision of a footway, the HDCO appears to have failed to take into account the fact that the windows of The Old Fox open outwards in the direction of the highway and would therefore pose a potential risk to users of the proposed footway. Moreover, given the nature and scale of the development, it would not generate a volume of pedestrian traffic sufficient to justify the provision of a footway. It is argued therefore that the provision of a footway does not fairly and reasonably relate to the development and does not therefore meet the test of para 3.15 of The Use of Planning Conditions for Development Management.

In addition, TAN 18 F3 states that

“(Developers) should not however be required to pay for improvements to deal with existing deficiencies in the road system which would not be made worse by the development.”

As highway authority the Council have the power and duty to provide a footway under the provisions of Section 66 of the Highways Act 1980 but in relation to this site have chosen not to do so.

The provision of a footway would also reduce the width of the lay by in front of the Old Fox resulting in vehicles encroaching onto the “live” carriageway, a situation that the HDCO was opposed to.

Condition 6 states that

“..... Within these splays there shall be no obstruction in excess of 1 metre in height above the level of the nearside edge of the adjoining highway. The splays shall thereafter be permanently retained clear of any such obstruction to visibility”.

This condition is considered to be ultra vires for the following reasons:-

1. The condition does not refer to permanent obstructions to visibility.
2. The area in front of The Old Fox is regularly used for the parking of vehicles associated with the nearby school.
3. As the applicant has no control over the parking of such vehicles he is unable to comply with the condition.

Condition 7 is conditional upon the provision of a footway, the condition which the applicant is seeking to remove. Condition 7 is therefore considered to be ultra vires.

The Whitehouse Partnership
September 2022