

THE PICKWICK ASSOCIATION



Pickwick Association comments on Application No: 18/02373/VAR

**The Pickwick Association objects to any variation to Condition 22.
The particulars of our objections are below.**

Background

This is Gladman's second cynical attempt to by-pass the requirements of Condition 22. Their first attempt one year ago (planning application reference 17/01539/VAR) was withdrawn once they had been advised by the Case Officer that

'.. having considered the proposals in detail my recommendation is for refusal.

The principle reason for this is that the pre-commencement trigger is inextricably linked to the bespoke conditions imposed by the Inspector with regards to submission of reserved matters and implementation following approval of reserved matters; the assumption being that the site is immediately available and deliverable. Conceding that this may not be the case through the variation of the condition to allow the further scrutiny of what was held at Inquiry to be an easily-resolvable issue would, in my view, partially undermine the Inspector's original judgement and give rise to an amended condition wording potentially failing the six tests.

If at this stage you would prefer to withdraw the application, I would be very grateful if you could let me know prior to the end of this week. Otherwise, pending the instruction of the local Councillor, the likelihood is that a refusal notice will be issued early next week under delegated powers.'

The applicant's stated justification on this occasion is almost exactly the same as his previous application. The actual form is identical apart from the date and the status of the signatory; the covering letter is the same, save that two paragraphs have been updated (or deleted) and one additional paragraph referring to a recent Government consultation (entirely irrelevant for reasons indicated below) has been added.

This submission that should be read in conjunction with our earlier submission on 17/01539/VAR sets out clearly why we **OBJECT** to the application and urge the Planning Authority to **REFUSE** it.

The grounds for our objections

- The opening words of Condition 22 are "No development shall take place until a Foundation Investigation Plan.....has been approved in writing....". The aim of Conditions 22 and 23 is to "ensure (our emphasis) that noise and vibration from underground mining activity shall not give rise to a noise level within any dwelling or noise sensitive building in excess of [specified

criteria]”. That says with considerable clarity that there must be ***absolute certainty, before development starts***, that houses can be built on this site with no potential for harm to the living conditions of future occupiers from noise and vibration resulting from underground mineral workings. Without that certainty, the development cannot proceed. Allowing development to start before the vital safeguards of the Conditions as written by the Inspector have been met involves a degree of risk that the Planning Authority should find completely unacceptable;

- At the time of the Inspector’s Report Wiltshire Council had accepted without question Gladman’s assertion that, if any future mining was ever to take place beneath the site, rock cover thickness would be similar to or deeper than that at the location at which their now discredited 2015 “test” took place (20m). Mining is now underway immediately beneath the Northern and Western fringes of the site, and reliable third party geological Information has since been provided to Wiltshire Council [GWP report 7 June 2017] making it quite clear that in some areas of the site mining rock cover thickness will be as little as 8.25 metres. Indeed, if the mine operator were to extract the upper beds (as he is perfectly entitled to) the minimum rock cover could be as little as 5.25metres. The existence, validity and significance of this information has been and continues to be consistently ignored by the Planning Authority.
- Approval would imply to the applicant that the Planning Authority is absolutely certain that development on this site is deliverable and be an explicit acceptance of Gladman’s claim to be “*committed and confident that condition 22 will be discharged in due course*”. Such assurance cannot possibly be justified until Condition 22, exactly as written by the Inspector, has been properly discharged ;
- The Inspector distinguished very carefully between conditions that were before development commenced and those that were before houses were occupied. Foundation design was to be approved before development commenced;
- Despite their being “*committed and confident that condition 22 will be discharged in due course*” Gladman have already had over 3 years since the appeal decision, been granted several extensions of time and still have failed to prove compliance. The planning condition is not overly restrictive - it is a perfectly sensible protection drafted by themselves, agreed and subsequently laid down by a Government Inspector. They have already had more than adequate time to sort it out - the delay is thus entirely of their own making not the local authority's. There is no reason why the condition should be varied to accommodate their inability to satisfy its requirements. Indeed, in view of the now greater knowledge regarding the geology beneath the site (see above) there is every reason why it should not;
- The reason not to start development is that the disruption that any development causes for the community must be minimised, especially without the certainty that foundations that meet the stringent requirements of Conditions 22 and 23 are both technically capable of design and economically viable;
- The content of those conditions was mutually agreed in writing between Gladman and Wiltshire Council in January 2015. Gladman have been perfectly aware of the requirement since that date, have failed to satisfy them and thus their obligations to the Council and to the community at large; and
- Given the propensity of undermined ground to collapse (the Council has a copy of our engineering geologist’s report GWP 170607 dated 7 June 2017 and will note that a minimum overburden of 17 metres is considered appropriate in some locations) any work on access (as the applicant seeks) should be preceded in any event by a land stability risk assessment

and we call on the Local Planning Authority to see that this work is commissioned and is completed before any preparatory or enabling work takes place.

What do Conditions 22 and 23 seek to achieve?

The Planning Inspector was quite methodical in his examination of this. His view was that the statement of common ground on noise and vibration (ref GLD/LPA/09) agreed between Gladman and the Council and which he (the Inspector) translated word-for-word into Conditions 22 and 23 would be effective '*in protecting the living conditions of future occupiers*' and addressing concerns '*that the scheme could have the effect of sterilising minerals under the site*'.

Hence the objective of the Conditions is to:-

- to satisfy the local authority, with absolute certainty, prior to development, that there will be no harm to the living conditions of future occupiers from noise and vibration resulting from underground mineral workings beneath the site;
- to assure the local authority prior to the start of any work that the site is actually capable of development as proposed;
- to protect the developer and, vicariously, the local authority, from damaging or otherwise interfering with mines or materials in third party ownership leading to possible claims of trespass, compensation, liability for damages and consequent injunctions to stop work on the site.

The variation proposed entirely fails to achieve those objectives, as did the previous attempt in 2017. It is no more than a repeat of an audacious attempt simply to brush aside all of the carefully constructed and perfectly reasonable objectives of Conditions 22 & 23.

The application should be REJECTED.

**The Pickwick Association
16 April 2018**

APPENDIX – SUPPLEMENTARY INFORMATION to the submission by The Pickwick Association dated 16 April 2018 objecting to application 18/04323/VAR

1. Particulars of case

Location: Land North of Bath Road, Corsham, Wiltshire, SN13 0QL

Proposal: Variation of Condition 22 of 13/05188/OUT relating to the Foundation Investigation Plan.

2. Relevant Planning History

2.1 Application 13/05188/OUT, 18 October 2013 Outline planning application to Wiltshire Council, Refused consent.

2.2 Appeal Ref: APP/Y3940/A/14/2222641. Outline planning permission granted for erection of up to 150 dwellings, up to 1,394 sqm B1 offices, access, parking, public open space with play facilities and landscaping at Land North of Bath Road, Corsham, Wiltshire SN13 0QL in accordance with the terms of the application, Ref 13/05188/OUT, dated 18 October 2013, and the plans submitted with it subject to the conditions set out in the attached schedule.”

2.3 Application 17/01539/VAR 17 February 2017 requests to amend the preamble to Condition 22 which presently reads:

22) No development shall take place until a Foundation Investigation Plan has been submitted to and approved in writing by the local planning authority. The Foundation Investigation Plan shall include:

To either:

22) Prior to the commencement of any dwelling or noise sensitive building on site, a Foundation Investigation Plan must be submitted to and approved in writing by the local planning authority. The Foundation Investigation Plan shall include:

Or:

22) No development shall take place, other than the permitted site access in general accordance with drawing no. 4746/01/01 dated October 2013, until a Foundation Investigation Plan has been submitted to and approved in writing by the local planning authority. The Foundation Investigation Plan shall include:

(Pickwick Association note:- Sterling Maynard’s plan ‘4746/01/01 A’ entitled “Preliminary Junctions Layout (30 mph)” indicates a similar, but not identical layout to that put forward by Redrow in the context of its Reserved matters Application.)

Gladman suggests that the amendment “would allow Redrow, subject to the successful outcome of the reserved matters application submitted and the discharge of any remaining pre-commencement conditions, to lawfully implement the development whilst working towards the successful resolution of the substance of the condition.”

Application withdrawn 27 April 2017 - Gladman having been notified that it would be refused.

2.4. Application 18/02373/VAR – 9 March 2018 requests to amend the preamble to Condition 22 in **exactly** similar terms as above.

3. The origins of Condition 22

From the outset, the Wiltshire Council has recognised that the co-existence of residential buildings above a working mine was of concern. Indeed it was one of the reasons for the Council's refusal of the original application. In his Decision dated 27 May 2015, following a lengthy Public Inquiry the Planning Inspector noted:-

147. The Council's 4th reason for refusal related to potential harm to the living conditions of future occupiers from noise and vibration resulting from underground mineral workings beneath the site. Additional technical information was produced during the Inquiry and it was ultimately agreed by the Council and the appellant that this matter could be addressed by conditions. The conditions would require a foundation investigation plan to be submitted for the approval of the Council, having regard to the results of vibration tests. A further condition would establish criteria for noise and vibration. The Pickwick Association expressed doubts that these measures would be effective. However, the suggested conditions reflect technical advice about foundation isolation systems which has been accepted by the respective noise experts for the Council and the appellant. In my view the conditions would be effective in protecting the living conditions of future occupiers. In addition they would address a concern, expressed by some parties, that the scheme could have the effect of sterilising minerals under the site.

On 27 January 2015, the Planning Inquiry was advised that the parties to the Inquiry had agreed on the terms of what was to become Condition 22.

Gladman have had more than three years to work on the discharge of Condition 22. They applied to do this through submission of documents in August 2016. These documents proved unsatisfactory to the Council and despite the Council agreeing to several extensions of time for Gladman to provide acceptable evidence that they could indeed fulfil that condition they failed to do so. The Council formally rejected their application on 28 February 2017. Knowing this, Gladman now attempts to pre-empt the situation by seeking to vary the terms of the Condition.

Importantly, to allow the variation proposed by Gladman would leave the local authority open to action should it subsequently be found that foundations to meet the requirements of Condition 23 cannot be technically or economically designed the site would prove to be incapable of development;

4. Comments on Gladman's covering letter

- The applicant suggests that the aim of the existing condition is to *"to protect the eventual occupiers of the buildings on the site from future noise/vibrations from the extant mineral consent pursuant to which underground mining (the extraction of Bath stone) could occur below the site"* as though mineral extraction was a vague possibility rather than a fact. Mining is presently being conducted directly beneath the site. The applicant is fully aware of this since he has very recently attempted appropriate vibration testing there in accordance with an agreed method statement. It is understood that, for reasons currently undisclosed, these tests yielded completely meaningless data and will have to be repeated

- The applicant claims that he is ‘committed and confident that Condition 22 will be discharged in due course’. He was, of course committed and confident that he could ignore the requirement for pre-approval of his original method statement and that his wholly flawed original application to discharge Condition 22 would be approved. It was formally refused by the local planning authority on 28 February 2017. We believe that his confidence is sorely misplaced and that he will be unable to discharge the Condition;
- The applicant refers selectively to recently published documents including the 2017 White Paper on housing and the Ministry of Housing, Communities and Local Government consultation document of January 2018. As regards the former, he refers in particular to the proposal to end ‘unnecessary delays caused by planning conditions’. ***Conditions 22 and its related Condition 23 are anything but frivolous or unnecessary; they relate to the fundamental ability for the site to be proven capable of development for residential purposes before any such development takes place on site.*** In this regard it is instructive to note that the White Paper makes a point of noting that “neighbourhood plans (are) being undermined, by leaving them vulnerable to speculative applications where the local planning authority does not have a five-year housing land supply”. As regards the more recent consultation document, that document suggests the prohibition of pre-commencement conditions save where those conditions are agreed in writing by the applicant. Gladman are party to the written agreement contained in document GLD/LPA 09;
- Similarly, the applicant states that “The Government recognised ...that planning conditions are an important function in achieving sustainable development” but that too many were overly restrictive. It would be difficult to think of a more important and reasonable condition than that a 150 house development should be sustainable directly over an active working stone mine. It is plain that the Inspector saw the importance of this in imposing Condition 22. So did Gladman since their representative expressly agreed to it. **It would be impossible to call this condition overly restrictive;**
- Similarly, should the council be minded to accommodate Gladman, then reliance on plan 4647/01/01 as envisaged by Gladman is not acceptable. That plan is not consistent with the site plan submitted in Redrow’s Reserved Matters Application neither does it provide for the required environmental mitigation matters which **must** be in place prior to **any** development starting. Indeed, an additional condition should be imposed requiring the construction of the buffer zone around the air shaft and the landscape/ecological corridors prior to the start of any development;

5. Protection for Planning Authority in case of Gladman’s failure to discharge Conditions within stipulated timescale.

In the event should the Council determine that the variation be approved and the applicant subsequently unable to satisfy Condition 22, then the applicant should be required, by condition, to restore the site to its original status as at the date of the lodging of Application 13/05188/OUT within a specified period. We propose that this period should not exceed 6 months and that the applicant should lodge a bond with the Council in the sum of, say, £10 million to enable the Council to undertake the restoration work in the event of a default by the applicant.

ENDS

16 April 2018