

Sandra Edwards

From: Amanda Scholes on behalf of Planning.Responses
Sent: 30 March 2017 08:38
To: Planning Scanning
Subject: FW: BE/18/17/PL - representation on deed of variation [CRSLLP-WORKSITE.FID19066655]
Attachments: BE_18_17_PL - representation on deed of variation_103960676_1.PDF

From: David Innes
Sent: 29 March 2017 18:10
To: Planning.Responses
Subject: FW: BE/18/17/PL - representation on deed of variation [CRSLLP-WORKSITE.FID19066655]

Please upload to the application website.

Thanks

David Innes | Planning Consultant , Strategic Development, [Arun District Council](#) | Location: First Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF DX 57406 Littlehampton

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Save the environment - think before you print.

From: Lisa Bazalo [REDACTED]
Sent: 29 March 2017 16:33
To: David Innes
Cc: Claire Fallows
Subject: BE/18/17/PL - representation on deed of variation [CRSLLP-WORKSITE.FID19066655]

Dear David

Please find attached a representation on behalf of our clients, the Church Commissioners for England, in relation to the deed of variation for BE/18/17/PL (application by Landform Bognor Regis Ltd for variation of condition 3 for approved plans & 23 for vehicular access imposed under BE/142/15/OUT).

Kind regards
Lisa

Lisa Bazalo | Associate (New Zealand)
for and on behalf of Charles Russell Speechlys LLP

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Our Ref: LBB/176133/00024
Your Ref: BE/18/17/PL

For the attention of: David Innes
Development Control
Arun District Council
The Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex BN17 5LF

Charles Russell Speechlys LLP
5 Fleet Place London
EC4M 7RD UK

By Email
David.Innes@arun.gov.uk

29 March 2017

Dear Mr Innes

Land to the West of New Barn Lane, Bersted, Bognor
BE/18/17/PL: Application by Landform for variation of condition 3 (approved plans) & 23 (vehicular access) of outline permission BE/142/15/OUT

As you are aware, we act for the Church Commissioners for England in respect of planning application BE/77/16/OUT. Following the grant of planning permission to Landform Bognor Regis Ltd (the Applicant) on 24 February 2016 for development at New Barn Lane (BE/142/15/OUT), we understand that the latest application relates to a variation of conditions attached to that permission so as to incorporate Access B as the relevant access. Permission BE/142/15/OUT was based on access along New Barn Lane (Access A) which runs adjacent to our clients' site subject to application BE/77/16/OUT.

We note that the Applicant's second application (for what is known as "Access B") and associated section 73 application currently remains undecided (BE/93/16/PL and BE/189/16). We have previously been in correspondence with you about our clients' concerns with that application and in particular the unilateral undertaking that was put forward by the Applicant. Those concerns remain.

Our clients' concerns with the current application (BE/18/17/PL) reflect their concerns regarding the second application. That is, they wish to ensure that both developments are deliverable with viable access solutions and that the grant of permission for BE/18/17/PL would not prevent our clients' development from coming forward in a timely manner. We understand that the Council shares those concerns. Indeed, the Report to Committee on application BE/93/16/PL notes that the undertaking "required amendment to take account of legal points" as "the Council requires the Unilateral Undertaking to allow for the deliverability of both developments as Committee had approved BE/77/16/OUT", on the basis that "the application was trying to bring together the accesses for the two different sites into one, which was considered to be a sensible solution."

Incompatible access arrangements

The fundamental issue is that the Highways Authority considers Access A and Access B to be incompatible. Should the Applicant proceed with Access A (BE/142/15/OUT), then our clients can also use that access (and vice versa). Should the Applicant proceed with Access B (BE/18/17/PL), then our clients must rely on what the Applicant has put forward by way of a deed of variation to deliver a shared access arrangement.

WKS/103644335.2

At present, the draft Deed of Variation states only that if the Applicant Implements (which excludes various operations) Access A, it cannot Implement Access B and vice versa. We have discussed with you that this would effectively require our clients to await Implementation of either access before it can proceed with its development.

We have therefore proposed that the Deed of Variation is amended such that Implementation of either Access by any party would prevent the other Access being Implemented. You have since suggested that this should be restricted to Access A (such that if our clients implement Access A, the Applicants cannot rely on Access B). We assume that this is on the basis that Access B runs through the land subject to permission BE142/15/OUT. We agree that this would be helpful to clarify matters.

There are a number of alternative solutions for the provision of access to our clients' land which our clients may pursue. In order that our clients can proceed with one of those alternative solutions, we suggest that the Deed of Variation includes wording such that, if the Council serves notice on the Applicant prior to Implementation of Access A requiring only Access B to be Implemented, the Applicant cannot proceed with Access A. We see no prejudice to the Applicant in this position given their efforts to secure Access B. However, it means that other potential accesses could be secured as necessary.

In the event that the above can be agreed, we have no additional substantial comments on the Deed of Variation as it provides our clients with the ability either to Implement Access A should Landform not proceed, to Implement Access B should access sharing arrangements be agreed or to proceed with an alternative access.

Minor comments

We have the following minor comments:

1. The Original Agreement (of 24 February 2016) refers to the Land, being that land referred to in Title No WSX343743, and also the Site, being the land shown on the plan. It is not clear which land is actually bound – the Deed does not specify this (contrary to section 106 statutory requirements). The Deed of Variation introduces title WSX1725, but there is no attempt to bind that additional land. Although the Schedule refers to it, it is ineffective if that land is not bound in the first place. The Original Agreement requires amendments so that it is clear that both titles are bound.
2. Clause 3.1 is ineffective. It requires references to Planning Permission in the Original Agreement to incorporate reference to the Section 73 Permission. However the Original Agreement is conditional upon Commencement of Development, but Development is defined only by reference to Application BE/142/15/OUT. References to Application also need to incorporate reference to the new application. The term "Commencement" as referred to in Clause 3.1 is not defined.
3. The definition of "Church Permission" only applies if permission is granted by the Council. It should include any permission granted pursuant to the Church Application (given that the Church Application has been called in) and any other permission granted for development of the Church Land in case a section 73 permission or similar is required.
4. We have previously expressed our concerns with paragraph 5 of Schedule 1. Our clients' application is for outline planning permission and access is not reserved. It will not expressly rely on Access A or Access B. This paragraph must be deleted otherwise the whole premise of the Deed of Variation could be undermined.

5. Paragraph 6 - this is acceptable, provided that the obligation could fall away should the Church serve notice on the Owners confirming that it does not wish to proceed with the Connection Agreement. This is of benefit to the Owners.

We look forward to hearing from you as soon as possible.

Yours sincerely



Lisa Bazalo
Associate (New Zealand)
for and on behalf of Charles Russell Speechlys LLP