

- 2020 -

IN THE MATTER OF CRUMPLEBURY,  
WHITBOURNE HALL, BROMYARD,  
HEREFORDSHIRE

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# OPINION

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# OPINION

1. This opinion relates to Crumplebury Farm, Whitbourne, WR6 5SG. On 3<sup>rd</sup> August 2017 Herefordshire Council (“HC”) granted planning permission for:

*“Demolition of 5no. existing redundant agricultural outbuildings to facilitate expansion of existing restaurant and following events facilities: Function Suite, Fine Dining Restaurant and Lounge, Conference Space and 16no. Accommodation Suites.”*

2. This was subject to 22 conditions and included 9 informatives. Condition 4 states:

*“The premises shall be used for restaurant, guest accommodation and a conference centre and for no other purpose (including any other purpose in Classes A3, C1 and D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.*

*Reason: The local planning authority wish to control the specific use of the land/premises, in the interest of local amenity and to comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.”*

3. The development has been lawfully completed and opened at the beginning of this year. The operator has always intended to host weddings and other events that would not be described as conferences. This was made clear during the application in discussion with HC, so the applicants were surprised by the condition. Events other than conferences have been held and HC received complaints from local residents.

4. In an attempt to regularise matters my instructing professional made an application under section 73 of the 1990 Act that sought to remove condition 4. The

reasons for this were explained in his supporting statement. (It also sought the removal of condition 16, but that is not a matter upon which I have been asked to advise.)

5. The application was due to be heard at committee last month and was recommended for approval by officers. The day before the meeting it was removed from the agenda. HC said that, due to matters raised by objectors, they considered there was a realistic possibility of a judicial review. It did not detail any possible basis for a judicial review, simply referring to the level of public interest.

6. The Planning Officer then requested extensive further information, stating:  
*“... the Council requires further information to be submitted detailing all intended uses, activities and frequencies for this site in terms of the level of use. This will include the numbers of events of wedding ceremonies; conferences; restaurant events; vehicle movements and frequency of each proposed use/element for this site and its intentions.”*

7. He also said that they were considering whether or not there would need to be a new full planning application instead of a section 73 application.

### **Scope**

8. I am asked to advise:
- (1) Whether there any basis for HC insisting that a full planning application is required rather than the section 73 application;
  - (2) Whether the holding of events, other than conferences, results in a material change of use of the building;
  - (3) Whether condition 4 meet the 6 tests; and
  - (4) Whether there is an opportunity to take legal proceedings against HC should it continue to assert that the development, that has been expressly granted

planning permission as an events facility, may not hold events other than conferences.

### **Policy**

9. NNPF paragraph 55 sets out six tests in its first sentence: *“Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.”* These tests are repeated in the PPG.

### **Advice**

10. The Town and Country Planning Act 1990 confers power to amend or remove conditions. It may not be used to achieve a variation to the description of development,<sup>1</sup> but that is not sought here. Rather the application seeks to be able to use the grant without the limitation of the condition, not to go beyond the grant. This is a straightforward application to remove a condition and I can see no basis for requiring a full planning application. If the application succeeds it would not produce a result that was inconsistent with the grant.

11. Whether different events would result in material change of use is a matter of planning judgment, but that planning judgment must be justifiable. That means that in order to say that a change would be material there would have to be a significant difference between a conference on the one hand and the proposed event. Conferences often last all day and are followed by a substantial conference dinner at which there can be music and dancing. A wedding reception typically lasts several hours and involve a substantial meal, music and dancing. If HC were to determine that there were, for example a material difference in land-use planning terms between a conference and a

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<sup>1</sup> Finney v Welsh Ministers [2019] EWCA Civ 1868.

wedding reception (and I can see none) they would have to justify this. I can see no justification and HC has not given one.

12. If there is no difference material to land-use planning between a conference and a wedding reception (and I do not consider that there is), a condition preventing wedding receptions would not be necessary, or relevant to planning. It would therefore fail two of the six tests. The same applies to other events.

13. Section 78 gives a right of appeal against the refusal or conditional grant of planning permission, including planning permission applied for under s.73. Court challenges are seldom appropriate where a planning appeal is possible.

14. There are two realistic options:

- (1) Wait for the council to determine the matter and, unless good reasons appear, appeal any refusal.
- (2) Appeal for non-determination.

15. The more cautious approach is often to wait for the council's reasoning, but there may be strong business reasons for appealing non-determination that, especially in a case where there is no apparent reason for the LPA's position make that the preferable option.

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