

<b>Parish:</b>	<b>Terrington St Clement</b>	
<b>Proposal:</b>	<b>Removal of condition 2 of planning permission 2/93/1113/F</b>	
<b>Location:</b>	<b>Land Between 14 And 20 Chapel Road Terrington St Clement Norfolk</b>	
<b>Applicant:</b>	<b>Mr Robert George</b>	
<b>Case No:</b>	<b>21/00221/F (Full Application)</b>	
<b>Case Officer:</b>	<b>Lucy Smith</b>	<b>Date for Determination: 23 March 2021 Extension of Time Expiry Date: 20 August 2021</b>

**Reason for Referral to Planning Committee** – Officer recommendation is contrary to the views of the Local Highway Authority and the application has been referred by Sifting Panel

**Neighbourhood Plan:** No

**Case Summary**

The application is for the variation of condition 2 of Planning Permission 2/93/1113/F, which states:

'Before the occupation of the development hereby approved, the car parking associated with the development and shown on the deposited plan shall be laid out and surfaced to the satisfaction of the Borough Council Authority'

The reason being: 'To ensure satisfactory provision of car parking for the proposed development in the interests of highway safety'

Planning permission was granted on 15 October 1993 for the creation of an office building and two residential units at 61 Marshland Street. As part of the original application, the car parking area, between 14-20 Chapel Road was indicated to be used as off-road car parking for both the commercial and residential uses at 61 Marshland St however was not conditioned to be retained in perpetuity.

This application seeks to remove the aforementioned condition as the parcels of land are no longer in the same ownership.

**Key Issues**

- Principle of Development
- Impact on Highway Safety
- Other material considerations

**Recommendation**

**APPROVE**

## THE APPLICATION

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This application seeks to remove the aforementioned condition as the parcels of land are no longer in the same ownership. This has been confirmed via Land Registry searches, which indicate the separation of the sites in October 2010.

## SUPPORTING CASE

No supporting case has been submitted with the application

## PLANNING HISTORY

19/00173/O: Application Refused: 29/03/19 - OUTLINE APPLICATION ALL MATTERS RESERVED: Residential development - Land Between 14 And 20 Chapel Road, Terrington St Clement

2/93/1113/CU: Application Permitted: 15/10/93 - Change of use from retail to insurance office and 2 flats - 61 Marshland Street Terrington St Clement

2/93/1251/CA: Application Permitted: 15/10/93 - Incidental demolition in connection with alterations - 61 Marshland Street Terrington St Clement

## RESPONSE TO CONSULTATION

**Parish Council: OBJECTION** - The Council support other residents objections and request that the conditions remain in place

**Highways Authority: OBJECTION** - The proposal, if permitted, would result in the loss of existing parking facilities which would lead to an undesirable increase in on-street parking, to the detriment of highway safety. Contrary to Development Plan Policies CS11.

## REPRESENTATIONS

**FIVE** letters of **OBJECTION** received, stating comments summarised as follows:

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- Inconsistency in cover letter provided by the applicant, as the car park was originally used daily in connection with the insurance office and flats
- Impact of loss of off road parking on highway safety
- Applicant states the intent to remove the condition to consider alternative uses of the land however no information has been provided

## **LDF CORE STRATEGY POLICIES**

**CS08** - Sustainable Development

**CS11** - Transport

## **SITE ALLOCATIONS AND DEVELOPMENT MANAGEMENT POLICIES PLAN 2016**

**DM15** – Environment, Design and Amenity

## **NATIONAL GUIDANCE**

National Planning Policy Framework (NPPF)

Planning Practice Guidance (PPG)

National Design Guide 2019

## **PLANNING CONSIDERATIONS**

The key issues are:

Principle of Development  
 Highway Safety  
 Other material considerations

### **Principle of Development**

Planning permission was granted on 15 October 1993 for the creation of an office building and two residential units at 61 Marshland Street. As part of the original application, the car parking area, which comprises around 197 square meters of open land between 14-20 Chapel Road, was indicated to be used as off-road car parking for both the commercial and residential uses at 61 Marshland Street.

The application is for the variation of condition 2 of Planning Permission 2/93/1113/F, which states:

‘Before the occupation of the development hereby approved, the car parking associated with the development and shown on the deposited plan shall be laid out and surfaced to the satisfaction of the Borough Council Authority’

The reason being: ‘To ensure satisfactory provision of car parking for the proposed development in the interests of highway safety’

Since the implementation of the original consent, the car parking area is now in separate ownership from the commercial use. The applicant seeks the removal of the condition to allow future development on site.

PPG guidance advises that 'in deciding an application under section 73, the local planning authority must only consider the conditions that are the subject of the application – it is not a complete re-consideration of the application'. The guidance advises new conditions may only be imposed if they do not materially alter the development originally permitted and sec.73 decision notices should set out all conditions including those conditions imposed on earlier permissions that continue to have effect. The granting of consent under S.73 does not remove the previous consent and therefore, either consent could be implemented or could continue to be utilised for the approved development.

Paragraph 56 of the NPPF (2021) requires that conditions are necessary, relevant, enforceable, precise, and reasonable in all other respects.

In this situation, a key consideration is the wording of the condition on the original consent. According to the evidence available, the car park was surfaced following the initial approval of the application and the applicant complied with the condition. The condition however did not require the car parking area to be maintained and retained as a car park thereafter.

The Agent has also stated that the application site has not been used in connection with the tenancies at 61 Marshland Street for in excess of 10 years, which is the required length of time for development not in accordance with conditions to become lawful. Therefore, no enforcement action could be taken for breach of condition.

It is the officers opinion that it would be unreasonable, given the length of time the permission has been implemented, combined with the wording of the condition in question and severed ownership, to add further restrictions to the consent at this stage or reword Condition 2 to require that parking be permanently held with 61 Marshland St in perpetuity.

Overall, the removal of condition 2 is therefore considered acceptable.

### **Impact on Highway Safety**

The Local Highway Authority has raised an objection to the application based on the loss of off-road car parking. This part of Terrington St Clement has limited off-road car parking capacity which therefore leads to significant amounts of parked cars on the highway throughout the day.

No specific number of spaces was required to be provided under the 1993 consent. Information submitted within the application form stated parking was provided for two staff members and 'one or two visitors.

As discussed above, the application site is not operating contrary to any condition and given the wording of the condition in question, it is not possible to enforce against the car park area not being used in connection with the retail use or adjacent dwellings. As a result of the fall -back position of the previous consent, it is not considered reasonable to add further restrictions to the application under this consent to require the retention of the parking area in perpetuity. It is also of note that on road parking is currently un-restricted in this area and the surrounding vicinity, with no double yellow lines or other parking restrictions in place.

Whilst the comments from the LHA regarding the impact of loss of off road-parking are noted, given the current lack of restrictions to on road parking noted above as well as the history of the site and wording of the existing conditions, it is not considered reasonable or necessary to impose further restrictions on this consent to otherwise control the use of the application site.

## **Other material considerations**

The application site was previously refused consent for the construction of a new dwelling (Ref No. 19/00173/O) due to highway safety impacts as a result of inadequate visibility splays and due to the loss of off-street parking. This application is a separate matter relating solely to the removal of condition discussed above and whilst the removal of condition may remove one reason for refusal, full planning permission would be required for any proposed future use at Land Between 14-20 Chapel Road.

**Crime and Disorder** There are no known crime and disorder impacts

## **CONCLUSION**

The existing consent, for the change of use from retail to insurance office and 2 flats (ref 2/93/1113/CU), was granted with conditions relating to the parking area being laid out and surfaced in accordance with agreed details.

The development was implemented in accordance with the consent and the applicant complied with all relevant conditions. Notwithstanding the comments from the Local Highway Authority and the Parish Council, the conditions did not require for the land to be retained as car parking in perpetuity and no enforcement action can be taken against the car parking area being left vacant and unused.

Whilst the comments from the Parish Council and Local Highway Authority are noted, it is the officers opinion that it would be unreasonable, given the length of time the permission has been implemented for, the wording of the condition, and the severed ownership, to add further restrictions to the consent at this stage or reword Condition 2 to require that parking be permanently held with 61 Marshland St in perpetuity.

The other condition on the consent related to the commencement of development within 5 years of the date of the decision notice. As the development has commenced, this condition can also be removed.

The application is therefore recommended for approval.

## **RECOMMENDATION:**

**APPROVE**