BEER INK LIMITED

PLOVER ROAD GARAGE, LINDLEY, HUDDERSFIELD, HD3 3PJ

STATEMENT TO SUPPORT AN APPLICATION FOR A LAWFUL DEVELOPMENT CERTIFICATE FOR A PROPOSED USE OR DEVELOPMENT

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1. This statement supports an application for a of Lawful Development Certificate for for a Proposed Use or Development for the continued the use of Plover Road Garage, Plover Road Lindley, as a micro brewery without complying with condition 2 of planning permission reference 2007/62/94723/W2.

The Brewery Planning Permission

2. Planning permission for the use of the former Plover Road Garrage as a micro-brewery was granted on 17 January 2008 ('the planning permission'). The planning permission is reference 2007/62/94723/W2. A copy is attached to this statement at annex 1. The planning permission has two conditions, the first condition is a standard time condition and the second condition relates to hours of operation ("condition 2").

3. Condition 2 states the following:

> *"The hours of operation of the premises and deliveries to and from the premises shall be as stated at Q 23 of the application namely, between the hours of 8.00 am to 5.00 pm Monday to Friday."*

4. Question 23 of the planning application form indicates that hours of operation: working hours are Monday to Friday 8am to 5pm; and hours of operation: delivery times are the same. The application form provides no indication of hours of operation: opening times. A copy of the application form is attached at annex 2.

5. There is no reference to opening times in condition 2.

Background

6. Local planning authorities may, pursuant to section 70 of the Town and Country Planning Act 1990 ('TCPA 1990'), grant permission either unconditionally or subject to such conditions as they see fit. The authority must have regard to provisions of the development plan so far as is material, and to any other material considerations.

7. The National Planning Policy Framework (NPPF), advises that planning conditions should only be imposed where they are: (i) necessary (ii) relevant to planning and (iii) to the development to be permitted (iv) enforceable (v) precise and (vi)

reasonable in all other respects[1]. These points are reiterated in the National Planning Practice Guidance (PPG)[2].

8. Further guidance setting out model conditions is contained in Appendix A to Ministry of Housing, Communities and Local Government Circular 11/95. The model conditions relevant to hours of use are all expressed in negative terms and prohibit the use or activity, such as deliveries, from taking place outside of specified times.

9. The approach to interpretation of planning permissions and implied conditions are considered in the Supreme Court Judgement, Trump International Golf Club Scotland Ltd v Scottish Ministers [2015] UKSC 7 ("Trump"). This Judgement explains that there is only limited scope for the use of extrinsic material in the interpretation of a public document such as a planning permission[3], but reference to some extrinsic materials, such as the planning application for permission, may be legitimate[4].

10. The Judgement explains the approach to be adopted to interpretation as follows:

> *"When the court is concerned with the interpretation of words in a condition in a public document such as a section 36 consent, it asks itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense. Whether the court may also look at other documents that are connected with the application for the consent or are referred to in the consent will depend on the circumstances of the case, in particular the wording of the document that it is interpreting. Other documents may be relevant if they are incorporated into the consent by reference (as in condition 7 set out in para 38 below) or there is an ambiguity in the consent, which can be resolved, for example, by considering the application for consent."* [5]

11. In Trump, the Supreme Court held that the starting point was interpretation and not implication (of a condition):

[1] NPPF paragraph 55.
[2] PPG paragraph: 003 reference ID: 21a-003-20190723
[3] Trump paragraph 33
[4] Trump paragraph 34
[5] Paragraph 34

> "*whether words are to be implied into a document depends on the interpretation of the words which the author or authors have used. The first question therefore is how to interpret the express words*"[6]

Justification

12. Having regard to the principles in Trump it is clear that question 23 of the application form is incorporated into the planning permission by reference. In terms of *"what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole",* the condition is positively worded. Condition 2 does not ban or prohibit working or deliveries outside defined hours. The condition does not refer to working or deliveries within those hours 'only' (or words to that effect). Furthermore the condition and question 23 are silent on opening hours. It is significant that the condition does not adopt the model form contained in Appendix 1 to Circular 11/95.

13. The effect of condition 2, in plain english is to impose certain operational hours for working and deliveries but does not prohibit working or deliveries outside of those hours. Furthermore, as the condition and question 23 are silent on opening times, there is no prohibition on the brewery opening outside the times specified.

14. Condition 2 cannot be lawful or enforceable. A condition which enforces specific performance by imposing certain operational hours, but it does not prohibit operation outside of those hours, is not necessary and/or relevant to planning. There would be no planning purpose behind enforcing such a condition.

15. Even if condition 2 were lawful and enforceable it could only enforce operational hours requiring the premises to be working. The condition could not prevent working or deliveries (or opening) occurring outside those hours.

Summary

16. Condition 2 of the brewery planning permission specifies working and delivery times. The condition does not prohibit working or deliveries outside of those times nor indeed does it prohibit the brewery opening outside of the times specified. The condition is only enforceable to require the brewery to work during the times specfied. Set in this context, imposing operational hours fails the policy tests of necessity and relevance to planning and there is no purpose to enforcing such a requirement.

Alyn Nicholls BA(Hons) MRTPI
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[6] Trump paragraph 333.