

**Statement by Richard Wyndham-Smith on behalf of Mr and Mrs Dodridge
For Application P21/S0290/FUL
Amendment of Condition at Fifield House, Ferry Lane, South Stoke.**

The Planning Officer's Report, in conjunction with the reports from the applicants' arboricultural consultant and the Council's Tree Officer, provide an accurate reflection of the issues of this application to amend condition 5 of permission P19/S1072/FUL . There are however just a couple of points I would wish to add.

The first is that the application before you was submitted at the request of your Council to assist in regularising the situation of not being able to enforce the condition, as mentioned in the Tree Officers report.

Second is that as the Condition stands it is ultra vires, as it does not comply with the requirements relating to the imposition of Conditions contained in Paragraph 55 of the 2019 NPPF. As I am sure you are aware, this sets out the "six tests" for Conditions. If a Condition fails any one of the six tests, then the Condition is invalid and the whole of the Condition falls away.

The six tests are that conditions must be:

1. Necessary
2. Relevant to planning
3. Relevant to the development
4. Enforceable
5. Precise
6. Reasonable in all other respects

As is quite clear from the Officer's Report (and I believe at the Parish Council meeting it was made clear by the one Parish Councillor who had taken time to visit the site and look at the situation), the planting of the yew trees in question is NOT necessary, and it is not relevant to any planning issues. More importantly, as already mentioned, the Tree Officer's Report referred to in the Planning Officer's Report at Paragraph 6.8, states "On balance I consider maintaining the requirements set out in the wording would be impossible to enforce...".

There is also the issue of "trespass" of the neighbours trees on to the applicants land. As mentioned in the reports attempts at planting smaller hedging plants, which would have a greater chance of survival than large trees, have failed due to the close proximity of the neighbours trees. These trees, as can be seen in the photographs in the Officer's Report in Paragraphs 6.7 and 6.8, grow over the fence, and for any chance of new planting in the vicinity to survive the substantial growth of the neighbours trees over the applicants' side of the boundary would have to be cut. This of course the owners of Fifield in principle the have a right to do, so long as the cut timber is thrown back on to the neighbours side of the fence. Although legally permissible this was not considered a neighbourly act and could be taken as an antagonistic approach and an action which is irreversible. In addition the substantial excavation required for the planting of the Yew trees is

highly likely to affected the roots of the neighbour's trees and resulted in the trees dying. It was therefore considered better not to plant the trees that would serve no purpose and to leave the neighbours trees as they are. The cutting of the neighbours trees and excavating the roots close to the trunks would be necessary to implement the planting condition that exists. A condition requiring such works that would result in the neighbour's trees being substantially affected, and possibly dying is not "reasonable in all other respects".

It can therefore be seen that the condition as it exists does not just fail one of the test, but four.

The application before you to amend the condition is a sensible solution to resolve the issue of an invalid Condition, resulting in the whole condition falling away.