Hewitt&CarrArchitects

Planning Statement

Variation of Condition 7 of Application SMD/2018/0599
(Removal of Permitted Development Rights)
Fairview, Caverswall Common
For Mr. & Mrs. M. Taylor

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1.0 INTRODUCTION

1.1. This Planning Statement has been prepared to support an application under s73 of the Town and Country Planning Act 1990 (As Amended) in respect of a recently approved application at Fairview, Caverswall Common Lane, Caverswall Common.

1.2. Planning application SMD/2018/0599 sought consent for the demolition of the existing dwelling on the site and the erection of a replacement dwelling, encompassing a lounge, kitchen, family room, dining room and shower room at ground floor, with four bedrooms, utility and bathroom at first floor.

1.3. The application was approved under delegated authority, and in doing so the following planning condition was imposed:

> *"7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that order with or without modification), no development as specified in Part 1 Class(es) A, B, D and E other than those expressly authorised by this permission, shall be carried out at the property without express planning permission first being obtained from the Local Planning Authority".*

1.4. The stated reason for the imposition of the condition is as follows:

> *"To enable the Local Planning Authority to control development within the Green Belt in order to protect its openness in future"*

1.5. It is the applicant's contention that the current wording of Condition 7 does not meet the tests for conditions as set out in the National Planning Policy Framework, and seeks consent to vary the condition to read as follows:

> *"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that order with or without modification), no development as specified in Part 1 Class(es) A, B, and D other than those expressly authorised by this permission, shall be carried out at the property without express planning permission first being obtained from the Local Planning Authority".*

1.6. This Planning Statement sets out the applicant's justification for the condition to be varied in this manner.

2.0 SITE DESCRIPTION

2.1. The application site lies within the North Staffordshire Green Belt and comprises a detached two-storey dwelling with single storey lean-to extension. It is set within a substantial curtilage, set well back from Caverswall Common, which runs to

the north of the site beyond established a former gravel pit which is now disused and overgrown with semi-mature/mature vegetation. Residential development is located to the southwest, and to the northeast, with agricultural land extending southwards and eastwards beyond the southern boundary. Vehicular access is taken from Caverswall Common to the north.

3.0 PLANNING POLICY

3.1. Paragraph 11 of the NPPF confirms that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan for this area comprises the Staffordshire Moorlands Core Strategy DPD (March 2014) and the following policies are of relevance to the determination of this application.

3.2. Policy SS6c of the Core Strategy states that the rural areas will provide only for development which meets an essential local need, supports the rural diversification and sustainability of the rural areas, promotes sustainable tourism or enhances the countryside. It goes on to state that essential local needs will be met by allowing the conversion, extension or replacement of an existing rural building in accordance with policies R1 and R2 of the Core Strategy. Policy SS6c also states that strict control will continue to be exercised over inappropriate development within the Green Belt allowing only for exceptions as defined by Government policy.

3.3. Policy R2 of the Core Strategy states that other than sites allocated for housing development in the Site Allocations DPD, only the following forms of housing development will be permitted in the rural areas outside the settlement and infill boundaries of the town and the villages:

- Affordable housing which cannot be met elsewhere, in accordance with Policy H2.
- A new dwelling that meets an essential local need, such as accommodation for an agricultural, forestry or other rural enterprise worker, where the need for such accommodation has been satisfactorily demonstrated and that need cannot be met elsewhere.
- Proposals for replacement dwellings, provided they do not have a significantly greater detrimental impact on the existing character of the rural area than the original dwelling or result in the loss of a building which is intrinsic to the character of the area.
- Extensions to existing dwellings provided they are appropriate in scale and design and do not have a detrimental impact on the existing dwelling and the character of the rural area.
- The conversion of non-residential rural buildings

4.0 MATERIAL CONSIDERATIONS

National Planning Policy Framework (NPPF)

4.1. The National Planning Policy Framework sets out guidance, *inter-alia*, in respect of safeguarding the Green Belt and on the imposition of planning conditions. The content of the NPPF has been taken into consideration in the preparation of this application and is discussed in more detail within the Planning Issues section below.

Planning Practice Guidance

4.2. This document sets out guidance, inter-alia, in respect of the use of planning conditions. The content of the guidance is discussed in more detail within the Planning Issues section below.

Appeal Decision 3200823 – Waggon & Horses, Nantwich Rd.

4.3. This appeal related to the proposed re-development of a previously-developed site for residential development and raises important conclusions in respect of the removal of permitted development rights. A copy of the appeal decision is enclosed as Appendix A and is discussed in more detail within the Planning Issues section below.

5.0 PLANNING ISSUES

5.1. The approved development under application SMD/2018/0599 encompasses the erection of a replacement dwelling on a site that is located within the North Staffordshire Green Belt. The development was acknowledged to encompass a dwelling that was materially larger than the one being replaced, and that as a consequence it amounted to an inappropriate form of development in the Green Belt.

5.2. Paragraph 143 of the revised NPPF confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances, with paragraph 144 advising that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

5.3. The applicant's case of very special circumstances presented in the application focused on the material fall-back position available to them under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (As Amended) with attention drawn to the extensions that the applicant would otherwise be permitted to undertake under Class A. The cited extensions, which were also drawn up as plans and elevations, encompassed single storey extensions on either side of the property (each extending in width to no more than half the width of the original dwellinghouse), along with a two-storey rear extension projecting up to 3 metres off the rear elevation of the property.

5.4. The supporting Planning Statement advanced the case that the extensions that could be undertaken as Permitted Development would derive a greater volume and greater footprint than that which was proposed in the application, and that this fall-back position, coupled with the material benefits of delivering a more energy efficient dwelling, collectively amounted to very special circumstances to justify approval of the development.

5.5. In granting consent for the replacement dwelling, the planning officer commented within the delegated report that:

> *"The applicant makes the case that the building could be extended under permitted development to include a lounge, snug, utility room, kitchen and dining area at ground floor level, with three double bedrooms and a bathroom at first floor level. The proposed dwelling is to have a slightly smaller volume (2.2m3 smaller) than the volume which could be achieved under permitted development. Therefore, the applicant argues that the proposed development is less harmful than the potential permitted development position. It is also worth noting that any future permitted development rights to* ***extend the dwelling*** *in future could be removed through granting the application which is before the Council currently.* ***This would control the amount of harm to the openness of the Green Belt in future****". (our emphasis)*

5.6. The delegated report went on to confirm that:

> *"As such, it is considered that the proposed development would be materially larger and therefore inappropriate development and may result in an impact upon openness to the Green Belt but this is not as harmful as that which the applicant could achieve without planning permission. The benefit of determining the application which is currently before the Council would be that the design can be controlled and any future permitted development rights for* ***further extension*** *removed. These are considered to represent very special circumstances". (our emphasis)*

5.7. However, the condition ultimately imposed on the decision notice, whilst withdrawing permitted developments to further extend the property (Classes A, B and D), also withdrew permitted development rights to preclude the erection of outbuildings on the site (Class E).

5.8. We submit that that the current wording of Condition 7, specifically the removal of Class E permitted development rights, fails the tests for conditions as set out in paragraph 56 of the NPPF, which are:

1. Necessary
2. Relevant to planning, and;
3. To the development to be permitted;

4. Enforceable

5. Precise, and;

6. Reasonable in all other respects

5.9. In this context attention is drawn to the provisions of the Planning Practice Guidance (Paragraph: 017 Reference ID: 21a-017-20140306) which states that:

> *"Conditions restricting the future use of permitted development rights or changes of use will **rarely pass the test of necessity** and should only be used in **exceptional circumstances**" (our emphasis)*

5.10. It is submitted that the removal of PD rights to erect outbuildings (Class E) fails the test of necessity, as the development was approved on the basis of the applicant's fall-back position of being able to *extend* the dwelling under Class A permitted development rights. The need to control future development within the Green Belt, insofar as outbuildings are concerned, does not amount to the *'exceptional circumstances'* test set out in the Planning Practice Guidance, and no reference is made to the impact of such outbuildings in the delegated report to the original application.

5.11. In addition, the existing dwelling already benefits from permitted development rights under Class E and the applicant could have exercised those rights *in addition* to implementing any Class A extensions that were identified as the material fall-back position. For these reasons the removal of PD rights for Class E development is not relevant to the development permitted and fails the tests of reasonableness. The exceptional circumstances identified within the Planning Practice Guidance do not exist in this instance, and accordingly we would request that the condition be varied to exclude reference to Class E permitted development rights.

5.12. In support of this matter I draw attention to appeal decision 3200823 (enclosed as Appendix A) where the matter of removing permitted development rights via condition was discussed. The proposal related to the re-development of a previously developed site within the Green Belt for the erection of three dwellings.

5.13. In allowing the appeal the Planning Inspector gave consideration to the conditions recommended by the Local Authority, which included a suggested removal of Permitted Development rights. The Inspector considered the request and concluded as follows:

> *"21. A condition has been suggested withdrawing normal permitted development rights relating to the enlargement or alteration of the dwelling, alterations to the roof, and garden buildings. Paragraph 017 of the PPG says **conditions restricting the future use of permitted development rights will rarely pass the test of necessity** and shall only be used in exceptional*

circumstances. However, and ***notwithstanding the Green belt location, I am not persuaded that the condition meets the exceptional circumstances 'test' in paragraph 017*** *and I shall not impose it". (our emphasis)*

5.14. This appeal decision reinforces the provisions of the Planning Practice Guidance that permitted development rights should only be removed in *exceptional circumstances*. No such exceptional circumstances are considered to exist in this case when it comes to the removal of Class E permitted development, and consequently the current wording of condition 7 is considered *ultra-vires*.

6.0 CONCLUSION

6.1. For the reasons set out within the Planning Issues section above, it is considered that the removal of Permitted Development Rights via condition, specifically the removal of Class E, fails the tests for conditions as set out in paragraph 56 of the NPPF. The condition is not necessary to make the development acceptable in planning terms, it is not relevant to the development permitted and fails the tests of reasonableness.

6.2. The Local Authority is therefore requested to vary the wording of Condition 7 to omit reference to Class E Permitted Development Rights. The variation of the condition in this manner will not derive any conflict with the provisions of policies SS6c and R2 of the Core Strategy, or the provisions of paragraph 145 of the NPPF and is therefore acceptable in planning terms.