Country View Bungalow, Black Bank Road, Cheddleton ST13 7LA

APPLICATION FOR REMOVAL OF CONDITION NO.3 AGRICULTURAL OCCUPANCY ATTACHED TO OUTLINE PLANNING PERMISSION SM/13975.

On Behalf of Mr C Simcock

PLANNING STATEMENT

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Introduction

1.1 Outline planning permission was granted to Mrs I Simcock – grandmother of the current applicant - by the Staffordshire Moorlands District Council on 13 September 1985 under reference SM/13975 for an agricultural worker's dwelling at Whiston Shaw Farm, Cheddleton. The decision notice is submitted with this statement, as is the reserved matters approval as subsequently granted on 27 March 1986 under reference SM/53/86. The dwelling was duly constructed shortly afterwards and in accord with the approved plans.

1.2 The agricultural occupancy condition no.3 on the decision notice SM/13975 states:

> 'The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed within ten miles of the site in agriculture as defined in Section 290 (1) of the Town and Country Planning Act, 1971, or in forestry (including any dependants of such a person residing with him), or a widow or widower of such a person'.

The reason for the condition is listed as number no.4 on the decision notice but should be no.3 as per the number of the condition, and states:

> 'The development is justified only on agricultural grounds'.

1.3 The reason for the current application is straightforward. On the evidence from the Council's own records, it intended to grant outline planning permission 'on the basis of personal circumstances' as known at the time rather than subject to the agricultural occupancy condition. This is explained in detail below.

2.0 Planning Issues

Decision Making at Outline Stage

2.1 Documents provided by the Council are clear about the prevailing background circumstances when the outline planning application was being considered in 1985. The District Council Planning Officer report records the professional opinion of the County Estates Officer, in response to the formal consultation, as follows:

> 'It is clear that the application arises from the personal circumstances of the applicant in that she has become recently widowed, rather than a proven agricultural need. Whilst it may be beneficial for the farming of this unit for Mrs Simcock's married son to live on the unit I would confirm that a second dwelling is not considered essential under agricultural grounds'.

2.2 The Planning Officer continues in the report to record his/her own 'observations', acknowledging the County Estates Officer comments, and stating:

> ' ….this application arises more out of the personal circumstances of the applicant rather than agricultural need. It is understood that currently Mrs Simcock's elder son who lives some 3 miles distance from the farm carries out most of the farm work. It is for this son that the dwelling is being requested. As pointed out by the County Estates Officer the size of the farm unit which consists of approximately 63 acres and an additional 25 acres of grass keep taken in each year does not justify 2 residential units.
> The site indicated by the applicants is a few hundred yards distance from the existing farmstead and would not be well related to the existing farmstead.'

2.3 The Planning Officer then proceeds in the report to recommend refusal due to:

> 'unallocated Green Belt and insufficient justification on agricultural grounds.'

2.4 The Officer report contains an annotated hand written note 'To Full Council'. It appears that this is effectively a record or minute of the decision made at that time by either the Planning Officer or the Council's Planning Committee (or equivalent) that the application should proceed to the Council's Full Council for the final decision to be made.

2.5 At the foot of page C5 of the Officer report there are further annotated hand written notes stating ‘Approve on basis of personal circumstances. Section 52 Siting’. It is considered that these notes are effectively a record or minute of the Full Council’s actual formal decision on the outline planning application.

2.6 The Planning Officer report, and annotated notes of the decision made, are critical to the consideration of both the technical accuracy of the decision notice that was issued, and also to the current application to remove the agricultural occupancy condition. Enquiries have been made of the Council at the pre application stage and it has confirmed there to be no other documentary evidence on file that is relevant to the decision making on the outline and reserved matters applications.

Analysis of Original Decision

2.7 The hand written recorded minute required that the Council issue an approval of the outline planning application ‘on the basis of personal circumstances’. Circular 1/85 on the use of conditions in planning permissions would have been known to the Council at the time. The Circular required there to be strong compassionate, or other personal grounds, for granting planning permission for a dwelling in this open countryside location where it would not normally be approved. The evidence in the Planning Officer report is clear that the personal circumstances of the applicant were not judged to meet these high level tests, stating only that it ‘may be beneficial’ for Mrs Simcock’s married son to live at the farm. Nevertheless the annotated record shows that the ‘Full Council’ did consider there to be sufficient justification for a decision to ‘approve on basis of personal circumstances’. The Local Planning Authority thus had authority from the Full Council to issue only a personal planning permission ie with a specific occupant named in an occupancy condition imposed on the permission. That is of course the prerogative of the decision maker despite the Circular 1/85 advice at the time that such a personal planning permission will scarcely ever be justified for the erection of a permanent building.

2.8 However, the decision that was subsequently issued by the Council is not a personal planning permission. It does not include a condition that the permission shall enure only for the benefit of the named person. There is no such condition to give effect to the decision of the Council as shown on the annotated notes on the Officer report. There is no further evidence in the documents provided by the Council that explain how or why the required ‘personal circumstances’ permission was not issued.

2.9 What the Council actually did instead was to impose an agricultural occupancy condition which is general in nature and with no ‘personal circumstances’ element . Moreover the condition as written does not take the standard format as was recommended as a model condition at the time in Circular 1/85. The model agricultural condition then allowed persons (and

dependants) working in agriculture ‘in the locality’ to occupy the dwelling, whereas the condition as imposed limited this geographic area to ‘within ten miles of the site’. There is no evidence in the available documents to explain why the Council considered the ten miles geographic area to be appropriate as a significant departure from the Circular 1/85 model format referring to the wider locality.

2.10 With due respect to the Council at the time, this sequence of events points to a significant misunderstanding about the difference between a personal, and agricultural, occupancy condition, and how the latter should be framed. There is further misunderstanding evident by the annotation ‘Section 52 Siting’. There is no Section 52 Agreement (the predecessor of today’s Section 106 Planning Obligation under the Town and Country Planning Act 1990) associated with the planning permission so far as enquiries with the Council have established. In fact there would be no planning reason for a Section 52 Agreement to address anything related to this case and certainly not ‘Siting’ issues which are properly identified in condition no.1 as a reserved matter for later approval. The handling and analysis of this planning application thus did not demonstrate the technical standards and that would undoubtedly be present today.

2.11 Since the permission has no personal occupancy condition, no such restriction exists despite the obvious intentions of the decision maker, the Full Council. The owner of the site need have no concerns about this matter since the absence of a personal occupancy condition is advantageous and not something the Council can now rectify, as explained below.

2.12 More fundamentally, since the agricultural occupancy condition that was imposed had no agricultural justification, there is a clear cut case for its removal now.

2.13 Primarily, as explained above, it is clear that the agricultural need for what would be the second dwelling on the holding was not accepted by the Planning Officer in the report, or the County Estates Officer, nor was it agreed or required by the Full Council. The available evidence provides no explanation as to how or why the agricultural occupancy condition then appeared on the decision notice. The hand written annotations on the Officer report are careful and clear as to the decision making process, and decision made and required to be issued. The actual decision as issued including the agricultural occupancy condition bears no relation or resemblance to that written evidence and appears merely to further reflect the faulty decision making process that surrounded this application.

2.14 There is no room for speculation that the annotations on the Officer report did in fact amount to, or require, or in any way authorise, an agricultural occupancy condition to be imposed. Had that been the case, it would have been very easy for such intent to have been expressed, in common ‘planning’ language. Moreover, had that been the Full Council’s intent, there would have been no need whatsoever to mention ‘on the basis of personal circumstances’ as it does since an agricultural occupancy condition (either as written on the

decision notice or in the model format) has no personal element and never has, either then or now. The known background factors could not reasonably lead in this direction and any such speculation would step considerably outside of the ordinary and plain meaning of the annotated words on the decision notice.

2.15 The stated reason for the agricultural occupancy condition is that:

‘The development is justified only on agricultural grounds’.

2.16 This reasoning flies in the face of all available evidence. The Planning Officer responsible for the case did not reach that conclusion in the report; neither did the County Estates Officer; and neither did the Full Council.

2.17 The Council has, at pre application stage, been requested to identify all documents on the planning application file (which is not routinely available for inspection due to its age and method of storage). The Council’s Support Officer has helpfully provided a list of the documents on the outline and reserved matters files. Copies of the Planning Officer reports and decision notices have been provided as noted above. There are no other file documents that would address any substantive planning issues. It has been specifically confirmed by the Support Officer by e mail dated 24 May 2018 that, on checking, neither file contains an agricultural report. It can thus safely be concluded that there was no other agricultural information available to either the Planning Officer, or the County Estates Officer, or the Full Council, which would have assisted the decision maker in 1985 to conclude that an agricultural occupancy condition was justified or intended.

2.18 The agricultural occupancy condition is therefore inexplicable and unjustified. The condition is of obvious disadvantage to the owner and the proposal now is for its deletion.

<u>Determination of Current Application</u>

2.19 The decision making process required of the Council in determining this specific type of application is found in national planning legislation and associated guidance. Since the dwelling already exists, local planning policies relating to the green belt and other planning matters are not relevant and are not considered in this supporting statement.

2.20 Section 73 of The Town and Country Planning Act 1990 provides for the ‘determination of applications to develop land without compliance with conditions previously attached’ stating that the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and,

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

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(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

2.21 Taking the above scenario a) first, the Council may – if agreeable to the proposed deletion of the agricultural occupancy condition – consider it necessary to retain conditions no.s 4 and 5 (septic tank and soakaways) and issue a fresh planning permission accordingly. This would though serve little planning purpose since the dwelling is long since built, with septic tank and soakaways already in place and with no ongoing planning requirement for such matters to be controlled through the Development Management system. These two conditions would therefore not be reasonable, necessary, relevant to the development or planning generally, and so would not meet four of the six tests for conditions as set out in the Planning Practice Guidance. This is sufficient reason for the Council not seek to reimpose these two conditions, and points instead to an unconditional approval, as addressed below.

2.22 The Council may see a second possible alternative under the above Section 73 scenario a) as an opportunity to revisit the circumstances present in 1985, and replace the agricultural occupancy condition with the personal occupancy condition that was intended at that time. However, the family circumstances of the applicant are now very different to 1985. The farmhouse (Whiston Shaw Farm) and its associated owned land of 63 acres was sold off to another unrelated and separate farming family in 1998. At that time the original intended occupant of Country View Bungalow – the ‘married son’ of Mrs I Simcock as noted in the Officer report in 1985 - left the site and purchased a dwelling in Cheadle, being his only residence. At the same time he ceased employment at Whiston Shaw Farm and took up employment at another unrelated farm. His employment and residential circumstances remain as such today and he has no connection to Whiston Shaw Farm or Country View Bungalow.

2.23 At the time the farm was sold Mrs I Simcock continued to live in Country View Bungalow - where she had in fact lived since it was built. Mrs Simcock passed away in January 2017. A family friend lived in the bungalow until July 2018, and since then it has remained unoccupied. Country View Bungalow is currently part of the Estate of Mrs Simcock and the current applicant Mr C Simcock (her grandson) proposes to purchase it from the Executors.

2.24 There are therefore no personal circumstances present to justify the second potential alternative in Section 73 a) as noted above, by seeking to now impose the personal occupancy condition that was intended in I985. Government guidance on the need for exceptional personal circumstances to be present in order for a personal planning permission to be granted remains virtually unchanged from 1985, through to Circular 11/95, and now up to date in the Planning Practice Guidance. Indeed an application today to remove the personal occupancy condition as intended in 1985 is all that should have been necessary, and would have a very good chance of success with those

personal circumstances now long since ended. The scenario now, with the agricultural occupancy condition in place, is very different and detrimental.

2.25 The same disadvantage would be true if the Council were to see this application as an opportunity to simply replace the 1985 agricultural occupancy condition with its modern equivalent ie remove the 'within ten miles of the site' employment requirement. No agricultural evidence has ever been before the Council and so it is difficult to see how this approach could be justified.

2.26 Turning now to the above Section 73 scenario b), the option to maintain all of the original conditions and thus refuse the current application is considered unjustified by the above evidence. To do so the Council would need to identify specific agricultural evidence that was available in 1985 and which justified the agricultural occupancy condition. However no such evidence was presented in 1985, and all of the Council's professional and technical advisors at the time – as well as the elected Members of the Full Council - were clearly of the view that there was no agricultural justification for the then proposed dwelling, and that only a personal permission could be granted. That being so, there is no case for retention of the agricultural occupancy condition by refusal of this application under Section 73 b) of the Town and Country Planning Act 1990.

2.27 The evidence in determining the current application leads firmly towards the outline planning permission being granted again but unconditionally ie without the agricultural occupancy condition, or any of the other original conditions, under the provisions of Section 73 a) of the Town and Country Planning Act 1990.

3.0 Conclusions

3.1 The Council itself has provided the evidence in this case and confirmed that nothing further exists. The Planning, and Estates, Officers in 1985 judged, in unequivocal terms, there to be no personal or agricultural justification for a second dwelling at the holding. Referral to the Full Council was nevertheless required for the final decision making. The recorded minute of that decision is to 'approve on basis of personal circumstances' despite the Government advice at the time, and since, being that a personal permission 'will scarcely ever justified'. That is the prerogative of the decision maker.

3.2 The Local Planning Authority did not, in the event, issue the authorised permission based on personal circumstances but instead imposed an agricultural occupancy condition. Any straightforward reading of the record of the Full Council's decision leaves no doubt that such a condition was not authorised or intended. The written record would have used ordinary language, and would have been plain to see, if it had intended such a condition. There is no room for speculation otherwise. An agricultural occupancy condition, both generally and specifically on decision notice SM/13975, does not include any personal element and so could not be interpreted to reflect the Full Council's decision. The stated reason for the

condition would usually reveal much about the underlying justification for the condition, but it again contains no ‘personal circumstances’ element to reflect the written record of the Full Council decision. It is clear then that the agricultural occupancy condition was imposed in error.

3.3 The application now is to remove the erroneously imposed condition. The Council has options in determining an application such as this under Section 73 of the Town and Country Planning Act 1990. It is considered that the evidence points firmly towards approval of this application, without imposition of any further conditions, thus removing the agricultural occupancy condition that was never intended or authorised in 1985.

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