A.E. Planning Consultants.

THE OAKLANDS, GREENWAY BANK, BIDDUPLH, STAFFORDSHIRE MOORLANDS, ST8 7QY.

PLANNING STATEMENT SUBMITTED ON BEHALF OF MRS TRACEY COTTRELL

RELATING TO AN APPLICATION MADE UNDER S.73 OF THE TOWN AND COUNTRY PLANNING ACT 1990.

REMOVAL OF CONDITIONS 3 AND 4 ATTACHED TO APPLICATION SMD/2015/0807.

MARCH 2020.

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1 INTRODUCTION

1.1 This statement is submitted on behalf of Ms Tracey Cottrell under s73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.

1.2 The application seeks planning permission for the retention of the extensions without complying with conditions 3 and 4 attached to planning approval SMD/2015/0807 dated the 17th February 2016.

1.3 Condition 3 states that: -

"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that order with or without modification), no development as specified in Part 1 Classes A, B, C, D, and E other than those expressly authorised by this permission, shall be carried out without express planning permission first being obtained from the Local Planning Authority.

Reason: To enable the Local Planning Authority to control the development and so safeguard the character and visual amenities of the area, and to ensure that adequate private open space is retained within the curtilage of the building."

Condition 4 states that: -

"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no additional windows or any other openings other than those expressly authorised by this permission shall be installed in any part of the development, without prior written consent from the District Council as Local Planning Authority.

Reason: To protect the amenity and living conditions of adjacent residential property from overlooking or perceived overlooking and the visual amenities in the area."

1.4 Documents submitted with the application include: -

- Completed application forms.
- Planning fee of £234.00.
- Planning Statement.
- Decision Notice – SMD/2015/0807.
- Location Plan – 01A
- Appeal Decision – 1167530 – Torquay.
- Appeal Decision – 210296 – Totnes.
- Appeal Decision – 2207393 – Mottram St Andrew.
- Appeal Decision – 3144395 – Langley.
- Appeal Decision – 2185169 – Wickford.

1.5 The application seeks the removal of condition 3 and 4 on the basis that they are not necessary to make the development acceptable and they are unreasonable in all other respects.

2. SITE LOCATION

2.1 The application property is a large detached red brick house situated in a relatively isolated position to the south of Greenway Bank, close to Knypersley Reservoir. The property is set back from the road and is well screened my mature trees and hedges.

3. RELEVANT PLANNING HISTORY

3.1 Staffordshire Moorlands District Council has confirmed that the site has the following relevant planning history:

SMD/2016/0701 - Demolition of rear concrete garage and replacement with new vernacular timber structure – Approved 17/02/2017.

SMD/2015/0807 – Demolition of rear outbuilding, single storey rear extension and garage and erection of part single, part two storey rear extensions and single storey side extension – Approved 17.02.2016.

4. THE APPLICATION

4.1 The application seeks the retention of the development without complying with conditions 3 and 4 attached to planning permission SMD/2015/0807.

5. PLANNING POLICY

5.1 The Development Plan comprises of the Saved Local Plan Proposals Map/Settlement Boundaries (adopted 1998) and the Core Strategy Development Plan Document (adopted March 2014). The site is in the Green Belt.

<u>National Planning Policy Framework.</u>

5.2 The National Planning Policy Framework sets out the Government's planning policies for England and how these are expected to be applied. The purpose of the planning system is to contribute to the achievement of sustainable development.

5.4 Relevant Green Belt policy relating is set out at paragraphs 143 to 147 of the Framework. The extension of an existing building is not inappropriate development, providing that is does not result in disproportionate additions over and above the size of the original building. Inappropriate development in the Green Belt may be permitted if there are very special circumstances which outweigh the harm to the Green Belt.

5.5 Paragraphs 54 and 55 of the Framework set out the policy context in relation to the use of conditions. These paragraphs are addressed in Section 6 of this report.

National Planning Practice Guidance (PPG).

5.6 The PPG was launched on the 6th March 2014. It was accompanied by a Written Ministerial Statement which includes a list of the previous planning practice guidance document cancelled when the PPG was launched. Paragraph 017 Reference ID: 21a-017-20190723 specifically addresses the use of conditions which restrict permitted development rights, and states that they should only be used in exceptional circumstances.

6. PLANNING CONSIDERATIONS

6.1 Section 73 of the 1990 Act provides that an application may be made for planning permission without complying with conditions applied to a previous permission. It is stated that local authorities may decide whether to grant permission subject to differing conditions, remove the conditions altogether or refuse to alter conditions. Thus, it is possible to apply for conditions to be struck out, or for their modification or relaxation. The section makes it clear that in considering such an application a Local Planning Authority may only consider the question of the conditions and not revisit the principle of the development.

6.2 The National Planning Policy Framework sets out six tests which planning conditions should satisfy. Conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants. As a matter of policy, conditions should only be imposed where they satisfy all the tests set out in paragraph 55 of the Framework. In brief these explain that conditions should be: -

- necessary
- relevant to planning
- relevant to the development permitted
- enforceable
- precise and
- reasonable in all other respects

6.3 Condition 3 removes a range of permitted development rights granted by the Town and Country Planning (General Permitted Development) Order 2015 (as amended). These include: -

- Class A – The enlargement, improvement or other alteration of a dwellinghouse.
- Class B - The enlargement of a dwellinghouse consisting of an addition or alteration to its roof.
- Class C – Any other alteration to the roof of a dwellinghouse.

- Class D – The erection of a porch.
- Class E – The provision of buildings within the curtilage of the dwellinghouse.

6.4 The reason for the condition is - *"To enable the Local Planning Authority to control the development and so safeguard the character and visual amenities of the area, and to ensure that adequate private open space is retained within the curtilage of the building."*

6.5 Condition 4 removes the ability of the householder to construct any further windows or doors within the property as permitted development. The reason for the condition is – *"To protect the amenity and living conditions of adjacent residential property from overlooking or perceived overlooking and the visual amenities in the area."*

6.6 The approved development consisting of the *"Demolition of rear outbuilding, single storey rear extension and garage and erection of part single, part two storey rear extensions and single storey side extension"* cannot be described as "otherwise unacceptable" without the imposition of condition 3 and 4. The Planning Officers delegated report acknowledges the fact that the proposed extensions should not be regarded as disproportionate and do not have any impact on the openness of the Green Belt. The original dwelling had no conditions restricting permitted development rights in respect of either extensions or domestic outbuildings. Condition 3 is, therefore, not necessary and is unreasonable in relation to the construction of the extensions.

6.7 Paragraph 21a-017-20190723 of the PPG states that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015, so that it is clear exactly which rights have been limited or withdrawn. Area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. An existing dwelling benefitting from permitted development rights in the Green Belt cannot be described as exceptional. If the Government had intended for permitted development rights to be restricted in the Green Belt, they could have done so (as they are restricted in designated areas such as Conservation Areas and National Parks). Instead, Part 1 permitted development rights apply equally within the Green Belt unless there are other reasons why they are restricted.

6.8 The circumstances of this case are also not exceptional. For instance, a simple question to be asked is why have permitted development right been withdrawn in respect of the construction of porches, the insertion of rooflights and the replacement of windows? The carrying out or such minor changes to the house would have no adverse impact on the character and appearance of the area and the Council are simply seeking to exercise an unnecessary form of control over such matters. The Planning Officers delegated report acknowledges the fact that the approved extensions should not be regarded as disproportionate and do not have any impact on the openness of the Green Belt. The

Council has not identified any harm to the Green Belt which would arise from the implementation of any future permitted development rights at the site. Whether the implementation of permitted development rights at a subsequent date would result in a disproportionate addition over and above the size of the original building (and therefore in conflict with Green Belt policy) is not relevant. The Government will have already considered that permitted development rights allow development which in many cases conflict with national planning policy.

6.9 The presumption against the removal of permitted development rights has been upheld frequently by Inspectors at appeal. For example, appeal APP/X1165/A/04/1167530 concerned a permission granted for a replacement dwelling in Torquay subject to a condition removing permitted development rights for Part I development. A copy of the appeal decision is submitted with the application. The Inspector states at paragraph 14 that: *"Paragraph 87 of Circular 11/95 makes it clear that conditions such as this should not be imposed, save in exceptional circumstances* and at paragraph 15 that: *"To impose the condition on a replacement dwelling is inequitable".*

6.10 A second example of a similar appeal, APP/K1128/A/09/210296, concerning a replacement dwelling in Totnes is also attached for consideration. Once again, the Inspector found that the imposition of a condition removing permitted development rights to be unreasonable and unnecessary.

6.11 A third example concerns the erection of a new dwelling at Rose Cottage, Castle Hill Mottram St Andrew, Cheshire East (APP/R0660/A/13/2207393). At Paragraph 7 the Inspector states: -

"National and local planning policy makes clear that the Green Belt and its open character are to be protected. However, Parliament intends that householders should be afforded a degree of flexibility to extend or improve their homes without the need for express planning permission. This applies equally inside the Green Belt as it does outside. Circular 11/95 says there should be exceptional circumstances to remove those rights. Simply being in the Green Belt is not sufficient or it would be necessary to remove those rights from all properties. Although the rights have recently been extended there is no indication that this additional freedom should not apply inside the Green Belt."

6.12 A fourth example concerns the erection of a new dwelling at Longley, Langley Road, Langley, Cheshire East (APP/R0660/W/16/3144395). Once again, the dwelling is located within the Green Belt and the Council have sought to remove permitted development rights in relation to Class A and E. At paragraph 7 the Inspector comments that "*National Planning Practice Guidance (PPG) is clear that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances."* The Inspector goes on to allow the appeal and concludes that "*there are no exceptional circumstances to justify the retention of the condition, which is neither reasonable nor necessary."*

6.13 The fifth, and final example, relating to the principle of restricting permitted development rights for dwellings in the Green Belt is at Damer, Meadow Way, Wickford (APP/V1505/A/12/218169). Paragraph 8 states:

"While it is reasonable to seek to control the spread of development in the Green Belt, there is no general restriction on permitted development rights within such areas, as there is in certain other specified areas such as National Parks. If such a restriction were considered necessary over a defined area it could be introduced by means of an Article 4 Direction. Conditions apply to individual development sites and must be justified as required by the Circular."

At paragraph 9 the Inspector comments that that no evidence has been presented to justify the imposition of this condition on the appeal property alone, and no circumstances were put forward which apply to the appeal site that would not apply to surrounding properties within the same area. The Inspector considered that it was unreasonable to restrict permitted development rights on the dwelling just because of its location within the Green Belt. The Inspector considered the council acted unreasonably in, amongst other things, seeking to retain the condition restricting permitted development rights in view of the lack of any substantial evidence in support of retaining it. A full award of costs was made against the Council.

6.14 The Council's reason for removing permitted development rights under condition 3 is - *"To enable the Local Planning Authority to control the development and so safeguard the character and visual amenities of the area, and to ensure that adequate private open space is retained within the curtilage of the building."* With reference to the latter the location plan submitted with the application clearly shows that the property benefits from a substantial curtilage where the occupiers of the dwelling would continue to benefit from a significant area of private open space. The delegated report offers no reasoned justification for the imposition of the condition. The property sits in landscaped grounds where any future extensions or outbuildings would not have any detrimental character and appearance of the area.

6.15 Condition 4 removes the ability of the householder to construct any further windows or doors within the property. The reason for the condition is – *"To protect the amenity and living conditions of adjacent residential property from overlooking or perceived overlooking and the visual amenities in the area."* The Planning Officers delegated report confirms that *"the nearest neighbouring residential property is some 60m to the east at a markedly lower level. No adverse amenity effects are identified for either property with this separation distance."* The location plan submitted with the application shows the position of the adjoining property to the east. The insertion of any new doors or windows on the ground floor would clearly have no adverse impact on the amenity of this property. Any upper floor window inserted in a wall or roof slope forming a side elevation of the house would also have to be obscure glazed and non-opening unless the parts of the window that can be opened are more than 1.7m above the floor of the room in which the window is installed. This requirement is set out in the conditions to Part 1 Class A and would clearly prevent any

overlooking of the property to the east. There are no other nearby houses to be affected. The condition is clearly unnecessary and unreasonable.

6.16 The application site is in a relatively isolated rural location and has been occupied by a dwelling and its curtilage for a considerable period. During this time the site would have benefited from permitted development rights for both extensions and domestic outbuildings. Similarly, many, if not all the nearby houses would also benefit from the permitted development rights conveyed to them by statute. The application property should be treated no differently to any of the other nearby houses which are also within the Green Belt. Many of these houses are large, have benefited from extensions and have extensive landscaped gardens. Whilst an attractive area within the Green Belt, it is not a conservation area nor a landscape which has any particular characteristics that justify the removal of permitted development rights contrary to the accepted presumption.

6.17 The site benefits from existing boundary treatment that clearly defines the residential curtilage of the property and provides substantial screening from public vantage points and there are no neighbours which would be affected by any future alterations to the house or by any outbuilding within the garden.

7. SUMMARY AND CONCLUSIONS

7.1 It is concluded that the proposed development satisfies the requirements of the National Planning Policy Framework and the development plan for the following reasons: -

- Guidance on the use of planning conditions is set out in Paragraph 54 of the Framework and the National Planning Practice Guidance. Paragraph 017 advises that development orders are designed to give or confirm a freedom from detailed control which will be acceptable in the vast majority of cases. Save in exceptional circumstances conditions should not be imposed which restrict permitted development rights granted by development orders. There are no exceptional circumstances in this case.

- Residential permitted development rights are applied no differently to properties within the Green Belt to those outside it.

- The exercise of permitted development rights under Schedule 2 Part 1 Classes A-E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) would have no significant impact on the openness of the Green Belt, the character of the existing dwelling or amenity.

7.2 The application seeks the removal of conditions 3 and 4, on the basis that they are not necessary or reasonable and because the site has always benefited from permitted development rights which should be allowed to remain. The proposed development is not otherwise unacceptable without the imposition of the conditions and it, therefore, fails to meet the relevant tests. There are also no exceptional circumstances for the condition, as required by the PPG. Since the proposed development clearly complies with national

guidance it is respectfully requested that the planning authority remove the planning conditions.

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