

PLANNING STATEMENT

GROVE FARM, CELLARHEAD

MARCH 2021

Site Address:

Grove Farm, Leek Road, Cellarhead, ST9 0DG

Applicant:

Mr. M. Shirley

Proposal:

Certificate of Lawfulness for Proposed Development:
Lawful implementation of application SM96-0333

Planning Statement:

Date Issued: 22nd March 2021

Job Reference: RDP/2021/031

Report Prepared By:

Rob Duncan BSc(Hons) MA MRTPI
Rob Duncan Planning Consultancy Ltd

Contact Details:

Rob Duncan Planning Consultancy Ltd.
70 Ferndale Road, Lichfield, Staffordshire, WS13 7DL
Email: rob78duncan@gmail.com
Tel. 07779 783521

1 Introduction

1.1 Rob Duncan Planning Consultancy Ltd. has been instructed by Mr. M. Shirley of Shirley's Transport Ltd. to lodge a lawful development certificate under s192 of the Town and Country Planning Act 1990 (As Amended) to seek confirmation that planning application SM96-0333 for the erection of a detached dwelling and garage on land at Grove Farm, Leek Road, Cellarhead has been lawfully implemented and that the applicant would consequently be free to continue works to complete the approved development.

1.2 The application follows on from a previously refused application on the site (SMD/2015/0748) for erection of replacement dwelling and detached garage. The application had been submitted on the basis that planning permission SM96-0333 had been lawfully implemented and thus amounted to an established fallback position. The Local Authority disagreed at that time, and refused permission for the following reason:

a) The site is located in the countryside beyond the built-up limits of any settlement and in the Staffordshire Green Belt where new development is only allowed where it can be demonstrated that an exception may be made to building outside the limits of existing settlements. Although full planning permission was granted for a replacement dwelling in 1996, and a start was made on building operations, there is no evidence that a lawful start has been made on that dwelling because the requirements of a pre-commencement condition were not met. The application has therefore been considered on the basis that it is for the erection of a new dwelling, and that there is no extant permission for the previously approved dwelling. In the absence of any Very Special Circumstances the proposal comprises "inappropriate" development which, by definition, is harmful to the Green Belt and the purposes of including land within it, and

should not be allowed. Furthermore, as there are no special circumstances to justify a new dwelling in the countryside, the proposal would result in unacceptable harm to the character and appearance of the countryside at this point. The application would thereby result in an unsustainable form of development and is accordingly contrary to Policies SS1, SS1a, SS6c (Parts 1, 3 and 6 in particular) and Policy R2 of the Staffordshire Moorlands Core Strategy Development Plan Document and the policy guidance of the NPPF for sustainable development and the protection of the Green Belt, the countryside and the natural environment.

- 1.3 This lawful development certificate seeks to demonstrate that the approved scheme under application SMD96-0333 was lawfully commenced, and specifically addresses the Local Authority's previously held assertion that the failure to discharge a pre-commencement landscaping scheme meant the scheme was not lawfully implemented.

2 Site & Surroundings

- 2.1 The application site is located within the North Staffordshire Green Belt and comprises an irregular shaped parcel of land that was previously occupied by a range of buildings and a farmhouse.
- 2.2 Planning permission was granted under application SM93-0333 for the erection of a replacement dwelling on the site, which followed on from earlier approvals for a replacement dwelling under applications SM702-88 and SM91-0999.
- 2.3 The approved scheme encompassed a detached two storey traditionally designed dwellinghouse, whose accommodation comprised a lounge, dining room, kitchen, utility and hallway at ground floor with three bedrooms and bathroom at first floor. A detached double garage was approved to the west of the dwellinghouse.
- 2.4 Vehicular access to the site was shown to be taken via an existing track that connects with the Leek Road to the northwest of the site.

3 The Proposal

3.1 This Lawful Development Certificate seeks confirmation that:

1) Planning application SM96-0333 was lawfully implemented despite non-compliance with a pre-commencement landscaping condition, and that consequently the applicant would be free to complete the works approved under that application.

3.2 In addition to the evidence set out within this Planning Statement, the application is also accompanied by the following additional documentation:

- Statutory Declaration of Mr. M. Shirley (Appendix A)
- Building Regulations Inspection Records (Appendix B)

4 Planning Assessment

- 4.1 Paragraph 006 of the Planning Practice Guidance relates to Lawful Development Certificates and confirms that an applicant is responsible for providing sufficient information to support an application. It goes on to state that if a local planning authority has no evidence itself, or from others, to contradict or otherwise make the applicant's version of events less than probable, then there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
- 4.2 Section 192 of the Town and Country Planning Act 1990 (As Amended) provides that if any person wishes to ascertain whether any operations proposed to be carried out on land would be lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.
- 4.3 This submission seeks to demonstrate that the replacement dwelling approved under application SM96-0333 has been lawfully implemented, and that as a consequence the applicant would be free to complete the approved works.
- 4.4 In order for the approved development to be considered to be implemented, s56(4) of the Town and Country Planning Act 1990 (As Amended) dictates that a material operation must take place. Material operations are defined as:

a) any work of construction in the course of the erection of a building

- aa) any work of demolition of a building*
- b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building*
- c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b)*
- d) any operation in the course of laying out or constructing a road or part of a road*
- e) any change in the use of any land which constitutes material development.*

4.5 Planning application SM96-0333 was approved on 24th June 1996 and granted consent for the erection of a replacement dwelling on the site. The permission was granted subject to five planning conditions, of which Condition 3 stipulated the following:

“3. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of the development”

4.6 The Statutory Declaration of Mr. M. Shirley accompanying the application confirms that works to implement the planning permission were undertaken in February 2001, which is within the five year implementation period

dictated by Condition 1. The works undertaken included clearance of the site (it being occupied by a number of buildings), digging trenches for the foundations, laying of foundation concrete, and construction of the building up to approximately damp proof course level, along with the laying of drainage.

- 4.7 Photographic evidence of the works undertaken on site are enclosed with the Statutory Declaration of Mr. M. Shirley, and those works remain on site to the present day and can be readily observed. The Statutory Declaration furthermore confirms that prior to constructing the dwellinghouse fees were paid to SMDC Building Control and the site was visited by Steve Mansfield (SMDC Building Control Officer). The Building Control records enclosed as Appendix B provide independent corroboration of those facts.
- 4.8 Having regard to the facts set out within the Statutory Declaration of Mr. M. Shirley it is beyond doubt that works to implement the planning permission SM96-0333, in the context of s56(4) of the Town and Country Planning Act 1990 (As Amended), were undertaken, and that they were carried out before the planning permission expired (Condition 1 of SM96-0333 refers).
- 4.9 The above notwithstanding, in determining application SMD/2015/0748 for the erection of a replacement dwelling on the site, the Local Authority concluded that a lawful commencement of SM96-0333 had not been made on account of Condition 3 (Landscaping) not having been addressed. I respectfully submit however that the Local Authority had not taken proper account of salient case law in reaching that conclusion, and that the breach of condition 3 of SM06-0333 did not serve to imperil the planning consent, and that a lawful commencement of development did occur.

- 4.10 In support of this assertion, I draw attention to the judgment in *R (Hart Aggregates Ltd) v Hartlepool Borough Council [2005]* which confirmed that a distinction must be drawn between conditions that require something to be done before development starts, and conditions which go to the heart of the permission. Only when both tests are satisfied is the condition considered to constitute a true conditions precedent to which the *Whitley* principle applies. Whether the breached condition amounts to a true conditions precedent that goes to the heart of the permission is a matter of judgment for the decision maker.
- 4.11 The judgement in *Hart* has been subsequently endorsed in the Judgments of *Bedford Borough Council v The Secretary of State for Communities and Local Government and Aleksander Stanislaw Murzyn [2008]* and *Greyfort Properties Ltd v Secretary of State for Communities and Local Government [2011]*.
- 4.12 The *Murzyn* judgment is of particular relevance to the submitted proposal, as the case hinged on a breach of a pre-commencement conditions relating to a landscaping scheme and boundary treatments. The judgment found that they were peripheral matters that were unlikely to affect the form and substance of the development, which in that case constituted a barn conversion.
- 4.13 In this particular case, condition 3 required the submission and approval of a landscaping scheme, including details of existing trees and hedgerows on the land to be retained, together with measures for their protection. It is clear from a review of the approved plans for application SM96-0333 that the location where the replacement dwelling was approved was otherwise occupied by buildings and was not in close proximity to any trees or hedgerows.

- 4.14 As a consequence, the requirements of Condition 3 are not considered to be central to the development, as was found to be the case in the *Murzyn* judgment discussed above, and rather they are peripheral matters that do not go to the heart of the permission. By resultant effect, planning permission SM96-0333 was lawfully implemented, and that the consent remains alive to this present day. The applicant would therefore be free to complete the development in accordance with the approved plans.

5 Conclusion

- 5.1 The totality of evidence presented in this application demonstrates beyond the balance of probability that works to implement planning permission SM96-0333 were carried out before the expiry of the planning consent, and that the provisions of Condition 3 of SM96-0333 do not go to the heart of the consent so as to imperil the permission. The planning permission was consequently lawfully implemented and remains alive to this present day. The applicant would therefore be free to complete the approved development without the requirement for a further grant of planning permission.
- 5.2 The Local Authority is therefore respectfully requested to grant a Lawful Development Certificate for Proposed Development to confirm the same.