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APPEAL STATEMENT

APPEAL PROPOSAL: REMOVAL OF CONDITION 3 RELATING TO PLANNING APPLICATION SMD/2014/0100 (BLANKET REMOVAL OF PERMITTED DEVELOPMENT RIGHTS)

APPEAL ADDRESS : PLEASANT VIEW, HULME LANE, WERRINGTON, STAFFORDSHIRE, ST13 5BH

APPELLANT : MR J MCGOWAN

DATE : JULY 2023 JOB No. : 2023-2821

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1.0 INTRODUCTION

Sammons Architectural Ltd have been appointed by Mr McGowan to prepare and submit a planning appeal under section 78 of the Town and Country Planning Act 1990 against the decision of Staffordshire Moorlands District Council to refuse planning permission which sought to remove a planning condition (condition 3) attached to a previous permission SMD/2014/0100 which imposed a blanket removal of permitted development rights on a replacement dwelling at Pleasant View, Hulme Lane, Werrington.

2.0 APPEAL SITE DESCRIPTION

The application site comprises of a detached two storey dwellinghouse which lies on the eastern side of Hulme Lane, Werrington. Constructed from facing brickwork under a plain clay tile roof the dwellinghouse which has a rectangular floorplan sits within the north eastern corner of a generous rectangular shaped plot. It lies within a loose group of dwellings on this side of the highway with a larger farm complex behind to the east and a former smallholding to the south which has recently diversified to provide an ice cream parlour and petting farm. To the west on the opposite side of Hulme Lane, lies a concrete block and profiled sheet agricultural building which appears to currently be used for stabling with open countryside beyond.

For the purposes of the Development Plan the application site lies outside any designated settlement boundary within the North Staffordshire Green Belt.

3.0 APPEAL PROPOSAL

Consent for a replacement dwelling on the appeal site had previously been granted previously by Staffordshire Moorlands District Council in 2007 under reference number 07/01144/FUL and was subsequently renewed under application 10/00972/REM. A further full application in 2014 under application reference SMD/2014/0100 was approved subject to planning conditions on 30th June 2014. A copy of the decision notice and corresponding case officer report are attached at Appendix 1 to this Statement. Condition 3 which imposed a blanket removal of permitted development rights is the subject of this appeal. The condition and the reason for imposing it are cited below for ease of use:

"Condition 3

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><C><D><E><F><G> and <H> and/or Part 2 Class(es) <A><B> and <C>, 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."

The application which is the subject of this appeal was refused by Staffordshire Moorlands District Council on the 25th September 2023 for the following reason:

“The property to which this decision relates is already materially larger than the dwelling it replaced but was allowed as the design benefits were considered to be very special circumstances to outweigh the harm to the Green Belt arising from the larger dwelling. The cumulative impact of the larger dwelling plus permitted development rights allowance, however, would not, on balance, outweigh the harm to the Green Belt. Furthermore, the design benefits which were given significant weight as very special circumstances could be lost through inappropriately designed, sited or proportioned extensions carried out under Permitted Development Rights. Therefore Condition 3 under SMD/2014/0100 to restrict future use of permitted development rights is necessary and reasonable having regard to local and national policy concerning development in the Green Belt. Exceptional circumstances as required by the Planning Practice Guidance was triggered to justify the removal of permitted development rights. Any extensions and alterations would in this instance, constitute as inappropriate development within the Green Belt. This would by definition, cause harm to its openness. As such, the Council considers that the condition removing permitted development rights to ensure that any proposed works do not detract from the openness and character of the surrounding area, meets the 6 tests and is necessary to ensure compliance with Local Plan Policy SS10 and the National Planning Policy Framework.”

Taking the above into account, the main issue is whether the condition is reasonable and necessary in the interests of safeguarding the character and visual amenities of the area and to ensure that adequate private open space is retained within the curtilage of the building.

4.0 POLICY

Section 38(6) of the Planning and Compulsory Act 2004 requires proposals to be determined in accordance with the Development Plan taking into consideration any material considerations relevant to the determination of the application.

The Development Plan for the area consists of the recently adopted Staffordshire Moorlands Local Plan (September 2020). The most relevant policies are considered to be SS1 (Development Principles), SS1a (Presumption in favour of Development), SS2 (Settlement Hierarchy), SS10 Other Rural Areas Strategy), H1 (New Housing), DC1 (Design Considerations), DC3 (Landscape and Settlement Setting) and T1 (Development and Sustainable Transport). For brevity these are not referenced in full here but referred to where appropriate in the statement below. Also of relevance is the councils adopted supplementary planning guidance Space About Dwellings and Design Principles.

The National Planning Policy Framework was updated in December 2023 and replaces the previous NPPF published in March 2012 and subsequent revisions. The NPPF is an important material consideration in determining planning applications. It introduces a presumption in favour of sustainable development and states that development proposals that accord with the development plan should be approved without delay.

Paragraph 11d states:-

> "Where there are no relevant development plan policies , or the policies which are most important for determining the application are out of date granting permission unless:-
>
> (i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

(ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in this Framework taken as a whole"

The most relevant sections of the NPPF are 2 (Achieving Sustainable Development), 5 (Delivering a sufficient supply of homes), 9 (Promoting Sustainable Transporting) , 11 (Making Effective Use of Land) , 12 (Achieving Well Designed Places) and 13 (Protecting Green Belt land). Again these are not reproduced in full here but referred to below where appropriate.

5.0 STATEMENT OF CASE

Under the provisions of s.70(1)(a) and S.72(1)(a) of the Town & Country Planning Act 1990, a planning authority may grant planning permission for development subject to conditions that regulate the development authorised by the planning permission.

The appeal site is located within the north Staffordshire Green Belt. The appellant seeks to remove the condition which imposes a blanket removal of all classes of development in parts 1 and 2 of Schedule 1 of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended).

The sole consideration in this appeal is whether the disputed condition is necessary, reasonable and fully justified having regard to the fact that its stated purpose is 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.”

Paragraph 54 of the NPPF states that "planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so". It goes on to state that "Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions (paragraph 55)" before warning that "planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects (paragraph 56).

More guidance is given in the Planning Practice Guide (PPG) which states that Section 70(1) of the Town and Country Planning Act 1990 enables the local planning authority to impose “such conditions as they think fit”. However this power must be interpreted in the light of material considerations such as Framework, the PPG and relevant case law.

The PPG sets out the 6 tests for conditions and states that they must be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects. The PPG also states 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. 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.

Although the Framework is silent on such matters, development that is permitted through the GPDO is development for which the principle has already been granted by secondary legislation, and there are no restrictions within the GPDO for domestic extensions or development within the curtilage of a dwelling located within the Green Belt, whereas such restrictions do exist, for example, on dwellings within conservation areas or areas of outstanding natural beauty or National Parks.

The appellant is aggrieved by the imposition of this condition as it unnecessarily inhibits their enjoyment of the property and may require unnecessary and burdensome planning applications to the Local Planning Authority in the future. The fact that recent alterations to legislation means that such applications, which have historically been free, now attract a financial charge is also a significant consideration for the appellant and considered to be a breach of their human rights.

The appellant accepts that there may be circumstances where it may be appropriate to impose a restrictive condition on a planning permission in order to prevent development taking place that would, under normal circumstances be development that it permitted by the GPDO. But these instances are generally limited to situations where there is a specific matter that is in need of protection. Land of a special natural or built character might need protection, for example a conservation area or where development might take place and affect the setting of a listed building would be examples. Or such restrictions might also be needed to safeguard the amenity of a nearby residential property this might be particularly important in high density housing developments.

However there are no such special circumstances in existence at the appeal site. Whilst the application site falls within the North Staffordshire Green Belt permitted development allowances would not conflict with the five purposes of including land within it which are:-

(a) to check the unrestricted sprawl of large built up areas;

(b) to prevent neighbouring towns merging into one another;

(c) to assist in safeguarding the countryside from encroachment;

(d) to preserve the setting and special character of historic towns; and

(e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

The case officer report for the appeal proposal states under the proposal section “that the disputed condition “removes permitted development rights for extensions, roof additions/ alterations, porches, garages and outbuildings”. This however is factually incorrect. The exact wording of condition 3 removes permitted development rights for all classes of both Parts 1 and 2 of Schedule 1 which means that the effect of the disputed condition is much wider than indicated by the case officer and as well as removing permitted development rights for extensions, roof additions / alterations, porches, garages and outbuildings it also means that permitted development rights for hard surfaces, chimneys, flues etc, microwave antenna as well as for other minor operations including gates, fences, walls etc, means of access to a highway and exterior painting have also been removed.

The case officer refers to the appeal dwelling as “large” in the paragraph under the description of site heading. However it is considered by the appellant that this statement is misleading. The appeal building sits within a plot which measures 385 sq metres. The dwelling as approved and constructed under the 2014 permission has a rectangular floor plan measuring 8.5m x 6.2m providing a relatively modest footprint of 52.7 sq metres which means that the dwelling, as constructed sits within a remaining plot of 332.3 sq metres meaning that the remaining space would not be limited. The appeal building is two storey in scale with an eaves height of 5.1m and an overall ridge height of 7.6, It is comparable to its neighbours in terms of size and scale, both of which are two storey. The Paddock has a substantially larger footprint of 90.7sq metres with its overall width(12.7m), including the attached garage being some 4.2m longer than the appeal

dwelling and at 8.4m being 2.2m wider too despite it sitting within a marginally smaller plot (373 sq metres) than the appeal dwelling. It is interesting to note that further in the case officer report (attached at Appendix 1) the case officer report for application 10/00972/REM is referred to and directly quotes "The original bungalow had a small rectangular plan form which contained a floor area of approx. 37 sq.metres. Whilst a side/rear extension, which provided a bedroom extension, kitchen, utility, bathroom and porch, was approved in 1984 and had subsequently been implemented the size of the existing dwelling house, which occupies a floor area of 59 sq.m, is still relatively modest.' The appeal building can't be both its either large or modest. Given that the appeal dwelling has an internal floor area just 6 sq metres above the minimum 93 sq metres set out for a 5 person 3 bedroom dwelling in the Nationally Described Space Standards the dwelling can hardly be considered to be large.

It is not contested that the original dwelling as it stood on 1st July 1948 was smaller than the dwelling which it replaced and which now stands on the appeal site. However, this increase in size and overall scale was accepted by the council as part of the 2014 permission on the basis that the original dwelling was poor and unsympathetic in terms of its form, design and materials and was deemed not to have any architectural merit or be in keeping with the valued vernacular of the locality.

The case officer report suggests that the "original" dwelling had a footprint of 37 sq metres which had been increased to 59 sq metres in accordance with development approved under a 1984 permission. It is interesting that the case officer has used footprint as the measure in this instance as openness has a three dimensional spatial impact and usually relies upon a volume comparison as opposed to a two dimensional calculation. In addition it should be noted that the figures quoted in the case officer report do not take into consideration the existence of a detached garage which was removed as part of the redevelopment of the site. This structure which measure 3m x 5m.5 had a footprint of 16.5 sq metres was clearly shown on the 1:200 site plan submitted and approved as part of application SMD/2014/0100. A copy of this has been attached at Appendix 2 to this appeal. Given that garages can be considered as extensions and the close proximity of it to the dwelling it is considered that some allowance should be given for this in determining the increase of the replacement dwelling over the original. If the footprint of the garage is included then the percentage increases quoted by the case officer are significantly reduced. The floor area of the original dwelling is increased to 53.5 sq metres and that extended under the 1984 permission and as stood on the site prior to demolition and rebuilding would have been 75.5 meaning that increase in floor area would be reduced from the 184% and 78% quoted to 97% and 40% respectively.

It is also the appellant's view that the comparison of the google maps street view images taken in 2009 and again in 2022 are also misleading. The image from 2009 is not clear and only readily shows the front aspect of the previous dwelling. The rear extensions are not easily visible and this results in a very misleading comparison. A quick view of the site plan referred to in the paragraph above clearly shows that the footprint of the appeal dwelling as constructed is actually less than that of the dwelling which it replaced.

Notwithstanding the above figures however the council ultimately concluded, when applying Green Belt policy, that the positive enhancement to the character and appearance of the area would sufficiently outweigh any harm to the visual amenity or openness of the area by virtue of a larger replacement dwelling.

The case officer report acknowledges that while the former case officer report "did not explicitly state why PDRs were to be removed, it follows that by doing so would restrict further additions to the curtilage of the site that had already exceeded the additions over and above the size of the original building and its extensions which would contrive with Green Belt Policy under Paragraph

149 d)." However It is not uncommon for buildings in the Green Belt to enjoy permitted development rights whose implementation could reduce the amenity space of the dwellinghouse. Paragraph 154(d) (previously 149d in the earlier revision) of the recently updated NPPF establishes that the extension or alteration of a building is not inappropriate development in the Green Belt "provided that it does not result in disproportionate additions over and above the size of the original building." As the government has made legislation which gives householders, including those in the Green Belt, the right to extend their dwellings within the limitations set out in the GDPO, it must follow that extensions falling within the GDPO limits cannot be regarded as inappropriate development in the Green Belt.

Whilst the case officer report for the previous application SMD/2014/0100 did not provide any justification for the removal of permitted development rights it is well known that blanket removal of permitted development rights was historically a common practice by most, if not all, Local Planning Authorities. The fact that the permitted development rights removed were not tailored and that all classes of Part 1 and 2 permitted development rights were removed indicates that this was indeed a blanket removal without any detailed consideration being given to the site circumstances. It is therefore suggested that the imposition of a condition removing permitted development rights was not thought out thoroughly as outlined by the case officer but rather the result of a fairly standardised practice of blanket removal of all permitted development rights on all replacement dwellings. Furthermore, it should be noted that the decision notice clearly states the reason why the permitted development rights were removed. Contrary to the case officers report which suggests that the removal of permitted development rights was to safeguard the character and appearance of the replacement dwelling this is not reflected in the wording of the reason attached to the condition which specifically makes reference to the safeguarding of the character and visual amenities of the area and to ensure that private open space is retained within the curtilage of the building.

The councils assertion that reinstatement of permitted development rights could result in unsympathetic designs of extensions is pure invention on the part of the LPA. The appellant is a builder and purchased the site shortly after the 2014 permission was granted. He was responsible for the build which has been carried out to an exceptional standard and uses high quality natural materials. There is no basis for suggesting that the restoration of rights granted to householders by the government would result in unsympathetic designs. The controls embodied in the GDPO are clearly designed to provide a sufficient level of control. On the basis of this concern, the LPA would have to impose a similar condition on every permission for a new dwellinghouse.

The Council intimate that the location and position of the dwelling has a bearing on "whether it could be harmful to the surrounding area". The report then goes on to state that "any potential works would likely be noticeable to the front if not to the side of the property and visible from the roadside."

Firstly any alterations to the front of the property would be very constrained. Due to the provisions set out in the schedule no extensions under Class A would be permitted on this elevation and similarly dormers on the front facing roofslope would also be prevented. Alterations on this "prominent" elevation would therefore be limited to the installation of roof windows and/or a porch which is extremely unlikely given the existing roof canopy. Furthermore, the property could not be extended to the rear under Class A permitted development rights due to the positioning of the appeal dwelling within the plot and the proximity of the rear boundary which makes such development unfeasible. Any extension on the rear would therefore be limited to rear dormers. Any such development would be restricted in size and height to the limited allowances permitted for such again limiting and reducing any potential impact and harm.

Whist the case officer report goes on to indicate that sizeable extensions could be added to both sides of the property resulting in the “doubling of” of the existing footprint this assessment again is factually incorrect. Firstly a 4.25m extension on the northern gable of the appeal dwelling could not be implemented as the distance between the existing gable and the site boundary is only 3m Any extension to the northern gable would however be set between the appeal dwelling and the neighbouring dwelling known as The Paddock. It would be set within the context of an existing domestic curtilage and would not result in any encroachment to or have any detrimental impact on the visual amenity or openness of the Green Belt.

Furthermore if 4.25m side extensions were added to both gables as suggested, then the total increase in width of the combined extensions would be greater than half the width of the original house and would therefore not be permissible under current regulations. Even if all permitted development rights were utilised (and this is a most unlikely scenario which forms no part of the appellant's plans) the existing house could not be doubled in size. The argument that the reinstatement of permitted development rights could potentially result in the doubling of the appeal dwellings footprint is therefore fundamentally flawed.

Similarly any such buildings or structures permitted under Class E could only be located on the southern side of the appeal dwelling. Such structures which would generally include garages, greenhouses etc and would be seen in relation to the main dwellinghouse and read as a building group rather than a standalone isolated and sporadic feature. Such an arrangement is typical of detached dwellings/smallholdings in this part of the Staffordshire Moorlands and it is considered that the erection of these would not have any impact on the openness or visual amenity of the Green Belt. The character of the site is that of a relatively modern yet modest dwelling which sits within a well established garden within a short ribbon of residential development on this side of Hulme Lane. There is no basis for the assertion that the character of the property would be adversely affected by possible future extensions and / or development within the curtilage. The regulations restrict the total area of ground covered by buildings, enclosures and containers with the curtilage to 50% of the total area. Even if this were undertaken, and it is no way suggested that it would be, the remaining garden area would still be significantly in excess of the 65 sq metres required under the council’s Space About Dwellings supplementary planning guidance (copy attached at Appendix 3).

As to the wider landscape, in views from the countryside surrounding the site, extensions permitted by the GDPO, to the limited extent that they would be visible from the public domain, would be seen against the backdrop of the existing dwelling. Furthermore, they would be screened by a large degree to the existing timber boarded fence, hedgerow and mature trees located on the southern and western boundaries. On the basis of the above it is not clear how harm to the character of the area through development undertaken by way of either of these PD classes would be caused. The impact on the character of the landscape will thus be negligible. Again, it is surely clear that if the government had intended that permitted development rights should be more severely restricted in Green Belt locations, additional controls would have been incorporated into the GDPO.

Whilst it is accepted that potentially permitted development on the site could give rise to a modest increase in the size and scale of the appeal dwelling and a number of additional buildings within the curtilage of the dwelling the LPA have not provided any evidence to demonstrate that permitted development rights are likely to be used to their maximum. Notwithstanding the fact that no substantial extensions are proposed in this application, the government has determined through legislation, the scale of extensions which should be permitted without the need for the permission of the LPA. If the government had intended that permitted development rights should be more severely restricted in Green Belt locations, additional restrictions would have been incorporated into the GDPO, just as they have been in Conservation Areas, National Parks and

some other designated areas. The fact that this proposal is within a Green Belt offers no justification for the condition. Unless the LPA can show that this is one of those “rare” cases where it can identify the “exceptional” circumstances which justify subjecting this development to a more stringent range of controls than would normally apply in a Green Belt, the imposition of this condition cannot be shown to be necessary.

The case officer report notes that The Paddock which abuts the appeal site to the north is also a replacement dwelling which has had its permitted development rights removed. According to the council’s interactive planning map there is no record of any planning applications being made for the site (see screenshot at Appendix 4) and the appellant is therefore unable to corroborate this. Irrespective of this each site must be judged on its own planning merits and the justification for removing permitted development rights cannot be transferred between the sites. The intimation that just because permitted development rights have been removed next door so they should be here only serves to further highlight that the imposition of a condition imposing a blanket removal of permitted development rights was undertaken without full and detailed consideration of the appeal site and its individual and unique circumstances. If the neighbouring dwelling is encumbered with such a restriction, then the occupiers of that dwelling has the same right as the appellant to appeal the planning condition. Whether they have chosen to do so or not should have no bearing on the outcome of this appeal which must be judged on its own merits and with consideration to the specific site circumstances discussed above.

Finally, on a note of clarification the site history section of the report mistakenly refers to application reference 10/00972/REM being refused. This application was actually granted with conditions and a copy of the decision notice is attached at Appendix 5.

In conclusion therefore it is considered that condition 3 which removes a broad range of PD rights is unreasonable. Furthermore, to remove permitted development rights to protect the character and visual amenities of the area, and to ensure that adequate private open space is retained within the curtilage of the building, would not meet the high bar of exceptional circumstance set out in the Guidance. The condition is therefore also unnecessary. The blanket removal of the permitted development rights allowed by the GPDO has not been fully explained or justified. The reason given for the imposition of the condition is general in nature and does not indicate the specific “reason” why it is necessary to restrict the anticipated development. Such a condition might be regarded as being relevant to the development that was approved, but it does not in fact, limit that development, but instead limits development that has not yet been devised or put to the local authority. Furthermore, it is unreasonable in that it restricts the reasonable aspirations of the appellant to the quiet enjoyment of their own property, when there is no evidence that any development they might wish to undertake in the future would be harmful to the appearance of the dwelling which the Local Planning Authority found appropriate to the site and locality and character and appearance of the area nor would it necessarily restrict or reduce openness within the site and reduce private amenity space to an unacceptable level. Consequently it is considered that condition 3 is neither necessary nor reasonable and thus fails to pass the tests in the Framework.

6.0 CONCLUSION

The condition restricting permitted development rights is neither reasonable or necessary in the interests of allowing the Local Planning Authority to retain control over the development and safeguard the visual amenity of the area and ensure adequate private amenity space is retained. Accordingly the Planning Inspectorate is therefore respectfully requested to allow this appeal thereby reinstating classes A to H of Part 1 and A to C of Part 2 of Schedule 1 permitted development allowances respectively.