

**BALJIT SINGH BHANDAL  
BALBIR SINGH BHANDAL  
AMRIK SINGH BHANDAL**

**APPELLANTS**

**REDETERMINATION APPEAL RELATING TO  
ENFORCEMENT NOTICE REF 17/00076/PLAN**

**RE: FOUR STONES RESTAURANT, ADAMS HILL, CLENT, STOURBRIDGE DY9 9PS**

**ISSUED BY: BROMSGROVE DISTRICT COUNCIL**

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**INDEX TO HEARING BUNDLE – VOLUME C  
HEARING 24 AUGUST 2021**

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Neutral Citation Number: [2020] EWHC 2724 (Admin)

Case No: CO/4504/2019

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**PLANNING COURT**

**IN THE MATTER OF AN APPLICATION UNDER SECTION 289 OF THE**  
**TOWN & COUNTRY PLANNING ACT 1990**

Birmingham Civil Justice Centre  
33 Bull Street, Birmingham B4 6DS

Date: 15 October 2020

**Before :**

**THE HONOURABLE MR JUSTICE PEPPERALL**

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**Between :**

(1) BALJIT SINGH BHANDAL  
(2) BALBIR SINGH BHANDAL  
(3) AMRIK SINGH BHANDAL

**Appellants**

**- and -**

(1) SECRETARY OF STATE FOR HOUSING,  
COMMUNITIES & LOCAL GOVERNMENT  
(2) BROMSGROVE DISTRICT COUNCIL

**Respondents**

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**Thea Osmund-Smith** (instructed by **FBC Manby Bowdler LLP**) for the **Appellants**  
**Killian Garvey** (instructed by the **Government Legal Department**) for the **First**  
**Respondent**

There being no appearance for the Second Respondent

Hearing date: 5 May 2020

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

**THE HONOURABLE MR JUSTICE PEPPERALL :**

1. By a written decision dated 17 October 2019, Mr J Whitfield, an inspector appointed by the Secretary of State for Housing, Communities & Local Government, dismissed the majority of the Bhandals' appeal against an enforcement notice issued by Bromsgrove District Council. Baljit Singh Bhandal, Balbir Singh Bhandal and Amrik Singh Bhandal now further appeal against such decision with the permission of His Honour Judge David Cooke.

**BACKGROUND**

2. The Bhandals own and operate the Four Stones Restaurant in Clent, Worcestershire. In July 2016, Bromsgrove District Council granted planning permission to demolish an existing sunroom at the front of the restaurant and build a replacement sunroom with a flat roof. The replacement building was not, however, built in compliance with the planning permission. Specifically:
  - 2.1 It has a different number of glazed panels on the front elevation.
  - 2.2 The upper section of the front elevation is glazed whereas on the approved plans it was not.
  - 2.3 The roof is sloping rather than flat. Further, it is higher and includes a projecting canopy with support columns.
3. The Bhandals sought planning permission for the sunroom as built. Such application was refused by Bromsgrove in July 2017 and by the Secretary of State on an earlier appeal in April 2018. Subsequently, the council issued an enforcement notice on 27 November 2018 requiring the removal of the unauthorised development and all building materials and rubble within three months of 3 January 2019, being the date when the notice took effect.
4. By an appeal dated 2 January 2019, the Bhandals appealed to the Secretary of State arguing the grounds at ss.174(2)(a), (f) and (g) of the *Town & Country Planning Act 1990*. In support of their appeal upon grounds (a) and (f), the Bhandals proposed four alternative developments:
  - 4.1 Option A: The removal of the overhanging canopy.
  - 4.2 Option B: The removal of the unauthorised roof and its replacement with a flat glazed roof.

- 4.3 Option C: As option B, but with the addition that the upper section of the elevations would comply with the 2016 planning permission.
- 4.4 Option D: That provision should be made to enable the closure of the opening that would result from the removal of the sunroom.
5. The inspector rejected the appeal upon ground (a). His rejection of option A is not challenged in this further appeal. He concluded that options B-D were outwith his powers to grant planning permission. Further, he rejected the appeal upon ground (f) that the requirements of the enforcement notice exceeded what was necessary. The inspector, however, partially allowed the appeal upon ground (g) and extended time for compliance to nine months to allow the parties time to explore alternative schemes.
6. By this further appeal, the Bhandals argue three grounds:
- 6.1 Ground 1: First, they argue that the inspector was wrong to conclude that alternative developments B and C would not form part of the matters constituting the breach of planning control because works would be required to build a new roof. Accordingly, they argue that the inspector was wrong to conclude that he had no power to grant planning permission for such alternative development.
- 6.2 Ground 2: Secondly, they argue that the alternative developments B and C proposed solutions that were short of complete demolition and that the inspector was therefore wrong to reject the appeal upon ground (f).
- 6.3 Ground 3: If all else fails, they argue that it was irrational to fail at least to grant permission for alternative development D.

## **THE STATUTORY FRAMEWORK**

7. Section 172(1) of the *Town & Country Planning Act 1990* provides that a local planning authority may issue an enforcement notice where it considers that there has been a breach of planning control and it is expedient to issue the notice. The statutory purposes for an enforcement notice are set out at s.173(4) of the Act:
- “(a) remedying the breach by making any development comply with the terms ... of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring it to its condition before the breach took place; or
- (b) remedying any injury to amenity which has been caused by the breach.”
8. An appeal may be brought on any of seven grounds set out at s.174(2). The relevant grounds in this case are:
- “(a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted ...

- (f) that the steps required by the notice to be taken ... exceed what is necessary to remedy any breach of planning control which may be constituted by those matters ...
  - (g) that any period specified in the notice in accordance with s.173(9) falls short of what should reasonably be allowed.”
9. By s.177(1)(a), the Secretary of State may “grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates.” By s.177(3), the permission that may be granted under s.177(1) is any permission that might be granted on an application under Part III of the Act.

### **GROUND 1: NEW WORKS**

10. As explained above, by ss.174(2)(a) and 177 planning permission can be granted on an appeal upon ground (a) in relation to the whole or part of the matters stated in an enforcement notice. Here, the inspector reminded himself, at paragraph 3 of his decision letter, that his power to grant planning permission was limited to permission for the whole or part of the development now enforced against. He concluded, at paragraph 19, that option A would form part of the development enforced against. He nevertheless rejected the appeal on the basis of such alternative development since it would not overcome the harm caused by the unauthorised development.
11. The inspector then concluded that it was not open to him to grant planning permission in respect of options B and C because such options involved new works:
- 11.1 As to B, he said, at paragraphs 24-25:
- “24. However, to carry out such an alteration, the canopy would be removed as well as the sloping roof, together with the upper glazed panels on the front and side elevation. The roof would be replaced with a new flat, glazed roof. Given that, as the appellant accepts, the alternative would require the addition of a flat roof, it seems to me that it cannot, by definition of the fact they are new works, form part of the sunroom as enforced against. Consequently, I find that the alternative development would not form part of the matters as enforced against in the notice.
  - 25. Regardless of the merits of the alternative, it is not, therefore, open to me to grant planning permission for it under the appeal on ground (a).”
- 11.2 As to C, he added, at paragraphs 26-27:
- “26. ... This would involve the addition of an upper section which is flat-roofed in line with the approved drawings. The proposal is for this to be aluminium framed and glazed to match the rest of the sunroom.
  - 27. This too would require the removal of the sloping roof and its replacement with a flat roof in line with the approved plans of the

2016 permission. Again, as this would involve new works in the formation of a roof, it seems to me that work would be required that do not form part of the sunroom as enforced against. Consequently, I find that the alternative development would not form part of the matters of the notice and it is not, therefore, open to me to grant planning permission for it under the appeal on ground (a).”

12. Thea Osmund-Smith, who appears for the Bhandals, argues that the inspector was wrong to take such a narrow view of his power to grant planning permission and that he failed therefore to exercise his judgment as to the planning merits of the alternative options proposed by the appellants. Killian Garvey, who appears for the Secretary of State, argues that the inspector properly exercised his planning judgment to conclude that the proposed alternative developments were not part of the development now enforced against. He contended that he was right in his approach to the statutory power but that in any event there were no proper grounds upon which the court could interfere with his exercise of planning judgment.

13. The proper approach to alternative schemes was considered by the Court of Appeal in *Tapecrown Ltd v. First Secretary of State* [2006] EWCA Civ 1744, [2007] P. & C.R. 7. Carnwath LJ, as he then was, first considered the planning authority’s discretion pursuant to s.173(3) to seek to enforce the breach of planning control either “wholly or partly.” He noted that the recommendation in his landmark 1989 report, *Enforcing Planning Control*, that there should be a “broad discretionary power to deal with the effects of a breach” and that the grounds of appeal should reflect such approach had been implemented by the 1990 Act. He continued, at [33]:

“In short, the inspector has wide powers to decide whether there is any solution, short of a complete remedy of the breach, which is acceptable in planning terms and amenity terms. If there is, he should be prepared to modify the requirements of the notice, and grant permission subject to conditions (or to accept a s.106 agreement, if offered). I would emphasise, however, that his primary task is to consider the proposals that have been put before him. Although he is free to suggest alternatives, it is not his duty to search around for solutions.”

14. He added, at [46]:

“I would accept that as a general proposition, given the limitations of the written representations procedure, an appellant would be well advised to put forward any possible fall-back position as part of his substantive case. It is not the duty of the inspector to make his case for him. On the other hand the inspector should bear in mind that the enforcement procedure is intended to be remedial rather than punitive. If on his consideration of the submissions and in the light of the site view, it appears to him that there is an obvious alternative which would overcome the planning difficulties, at less cost and disruption than total removal, he should feel free to consider it.”

15. While such observations were strictly obiter, the Court of Appeal’s acceptance of this approach in *Moore v. Secretary of State for Communities and Local Government* [2012] EWCA Civ 1202 was not. Citing *Tapecrown*, Sullivan LJ observed in *Moore*, at [40], that where there was an “obvious alternative which would overcome the planning difficulties at less cost and disruption” then the inspector was under a duty to consider it. Such formulation was subsequently approved by the Court of Appeal in *Ahmed v. Secretary of State for Communities & Local Government* [2014] EWCA Civ 566.
  
16. In *Secretary of State for Communities and Local Government v. Ioannou* [2014] EWCA Civ 1432, an enforcement notice was issued in respect of the unauthorised conversion of a family home into five self-contained flats. On appeal, Mr Ioannou proposed an alternative three-flat scheme. Ouseley J rejected the appeal upon ground (a) on the basis that something other than the grant of permission for all or part of the matters alleged in the enforcement notice would be required to achieve the three-flat scheme. While such ruling was not the subject of the appeal, it is clear from paragraph 11 of his own judgment in the Court of Appeal that Sullivan LJ agreed. The appeal in *Ioannou* concerned the limits of ground (f) and in particular the conclusion, at [28], that planning permission can only be granted upon under ground (a) and s.177(1)(a).
  
17. Sullivan LJ made the important point that *Tapecrown* does not establish a free-standing “obvious alternative” test as a replacement for the express statutory limitations imposed by the Act. Indeed, the power to grant planning permission in respect of alternative proposals is not unfettered. Sections 174(2)(a) and 177(1)(a) require a comparison between “the matters stated in the enforcement notice as constituting a breach of planning control” and the alternative scheme under consideration. Here, the matter stated in the notice as constituting the breach was the erection of a replacement glazed sunroom. Accordingly, for each proposed alternative development:
  - 17.1 The inspector first had to exercise his planning judgment to determine whether planning permission for the proposed alternative development would be in relation to the whole or part of the sunroom that had been erected in breach of planning control.
  - 17.2 If the answer to such question was affirmative, the inspector would then have to exercise his further planning judgment to consider whether, after having regard to the applicable development plan and all other material considerations, permission should be granted for the proposed alternative development.
  
18. In *Ioannou*, Sullivan LJ observed, at [38]:

“It is unnecessary to adopt a strained interpretation of ss.173(11) in order to ensure that enforcement proceedings retain their remedial character. If, as in the present case, an alternative scheme is put forward which is not part of the matters stated in the enforcement notice as constituting a breach of planning control, but which the Inspector considers may well be acceptable in planning terms, he can follow the course which the Inspector adopted in the present case: allow the appeal under ground (g) and extend the period for compliance with the notice so that the planning merits of the alternative can be properly

explored... Local planning authorities usually issue enforcement notices as a last resort when persuasion and negotiation with the landowner has failed. It is open to a landowner who wishes to obtain planning permission for such an alternative scheme to apply for planning permission for that scheme at any time, whether before or after an enforcement notice has been issued. The local planning authority's power in s.70C to decline to determine applications for planning permission made after an enforcement notice has been issued applies only if granting the permission would involve granting permission 'in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control.'"

19. This case does not concern s.173(11), but it is equally unnecessary for the court to adopt a strained interpretation of the power to grant planning permission under s.177(1)(a):
  - 19.1 If the proposed alternative development can properly be regarded as "part" of the matters enforced against then the Secretary of State can grant planning permission under s.177(1)(a).
  - 19.2 Indeed, in such a case the appellant should seek planning permission through an appeal since otherwise the planning authority will be entitled to decline to determine a fresh application for such alternative development pursuant to s.70C, which provides:

"A local planning authority may decline to determine an application for planning permission ... for the development of any land if granting planning permission for the development would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control."
  - 19.3 If the alternative development is outwith the scope of ss.70C and 177(1)(a) then it can be pursued by a freestanding application for permission. In such a case the inspector may, if he considers that the alternative development might be acceptable in planning terms, allow an appeal upon ground (g) and extend time in order to provide a window during which the planning merits can be explored.
20. In *Arnold v. Secretary of State for Communities and Local Government* [2015] EWHC 1197 (Admin), Dove J noted that there was some justification in the Secretary of State's submission that two proposed alternative developments involved a "redesign of the internal arrangements, footprints and elevations at ground floor level" such that, in accordance with the approach of Ouseley J in *Ioannou*, these alternatives went "beyond being 'part of' the dwelling constructed and enforced against." The appeal against the inspector's decision refusing planning permission on such ground was dismissed both by the judge and, on further appeal, by Davis and Lindblom LJ in the Court of Appeal: [2017] EWCA Civ 231.
21. The facts of *Abmed* bear closer examination. Planning permission had been granted in 2005 for the demolition of an existing building and the erection of a three-storey

building with a butterfly roof comprising a retail unit on the ground floor and six flats arranged over the upper two floors. In breach of planning control, the developer built a four-storey building with a flat roof. The planning authority issued an enforcement notice requiring the demolition of the four-storey building. As part of his appeal, Mr Ahmed proposed modifying the building in order to comply with the 2005 planning permission which, by then, had lapsed. He argued that the requirement to demolish was over-enforcement. Before the Court of Appeal, the Secretary of State argued that s.177(1)(a) was not “wide enough” to empower the inspector to grant planning permission in accordance with the 2005 scheme. Rejecting such argument, Richards LJ held, at [27]:

- 21.1 In principle, planning permission could be granted for the 2005 scheme if “the differences between it and the development as built ...were such that a development in accordance with the 2005 scheme could be regarded as ‘part’ of the development as built.”
  - 21.2 That was a matter of planning judgment which, on the facts of *Ahmed*, the inspector failed to make because he did not give any consideration to the possibility of granting planning permission for the 2005 scheme.
  - 21.3 The appeal court was not in a position to decide what conclusion the inspector would have reached if he had considered such possibility. “In particular, we cannot exclude the possibility that he might reasonably have concluded that the 2005 scheme was to be regarded as ‘part’ of the development as built ...”
22. While in *Ahmed* the inspector failed to exercise his planning judgment as to whether the proposed alternative development was part of the development as built, in this case the inspector considered that issue and concluded that options B and C could not be regarded as part of the development as built because they involved new works. Thus, to that extent, Mr Whitfield did exercise his planning judgment. It is, however, striking that if Mr Whitfield was right to take such an approach to his power to grant planning permission then Carnwath LJ was wrong to regard the Act as conferring a wide power to consider alternative schemes. Upon the approach of the inspector in this case, any alternative scheme that did not simply involve partial demolition would necessarily involve some element of new work and would not therefore be open to the inspector under ground (a). Indeed, the appeal in *Ahmed* would have been entirely academic if the new work involved in building the butterfly roof in accordance with the 2005 permission was a complete answer to Mr Ahmed’s challenge. Further, there would have been no question of considering an alternative scheme in *Tapecrowm* if the works to block up the windows would have prevented the inspector from granting planning permission.
23. I accept that whether planning permission for any proposed alternative development would be in relation to the whole or part of the matters comprising the breach of planning control is a question of planning judgment for the inspector with which the court should be slow to interfere. Further, I acknowledge that there is no need to take a strained interpretation of s.177(1)(a). I am, however, satisfied that the inspector erred in law in taking a very narrow view of his power to grant planning permission upon the Bhandals’ appeal. The essential question was not whether the proposed alternative development required some additional work, but rather whether it could properly be described as relating to the whole or part of the matters

enforced against. The extent of new work required by an alternative development might well indicate that, upon analysis, it does not relate to a part of the development as built. The need for new work will therefore be an important factor in the exercise of planning judgment. It is not, however, right to say that the need for *any* new work at all is determinative of the matter.

24. I reject Mr Garvey's submission that the approach in *Ioannou* compels a different conclusion. One can well see that there is a difference between a case such as *Abmed* where it was a matter of planning judgment whether the alternative proposal for a three-storey building was a part of the four-storey building erected in breach of planning permission and cases like *Ioannou* in which it was not possible to form three flats out of the five developed in breach of planning permission without undertaking significant internal reorganisation. Equally, I reject the submission that the inspector's focus on new work should be seen as a convenient label for the statutory question under s.177(1)(a). Rather he regarded the existence of any new work as determinative of such question.

25. I am fortified in my conclusion by consideration of s.177(1)(a) in its wider statutory context. As explained above, while the section allows the inspector upon an appeal under s.174(2)(a) to grant planning permission in relation to the whole or part of the matters specified in the enforcement notice, conversely s.70C allows a planning authority to decline to determine a separate application in respect of such matters. The scheme of the Act is therefore that the applicant should only get one bite of the cherry to have the planning merits of any alternative scheme considered, whether upon:

25.1 an appeal against an enforcement notice under s.174;

25.2 a planning application that was extant at the time of the issue of the enforcement notice pursuant to s.174(2A); or

25.3 in other cases, a fresh planning application.

[See *R (Wingrove) v. Stratford-on-Avon District Council* [2015] EWHC 287, [2015] PTSR 708 (Cranston J); *R (Banghard) v. Bedford Borough Council* [2017] EWHC 2391 (Admin), [2018] PTSR 1050 (Nathalie Lieven QC) and *R (Chesterton Commercial (Bucks) Ltd v. Wokingham Borough Council* [2018] EWHC 1795 (Admin), [2019] PTSR 220.]

26. In *Wingrove*, Cranston J observed, at [30]:

“The legislative history of s.70C demonstrates that Parliament's intention was to provide a tool to local planning authorities to prevent retrospective planning applications being used to delay enforcement action being taken against a development. It seems to me that there is a legislative steer in favour of exercising the discretion, especially since an enforcement notice can be appealed and the planning merits thereby canvassed.”

27. If the inspector was right in this case to take a very narrow view of the power under s.177(1)(a) to grant planning permission, then equally the planning authority's own discretion pursuant to s.70C to refuse to entertain a like planning application would

be narrow. While applicants should not get two bites at the cherry, as Nathalie Lieven QC (as she then was) demonstrated in *Banghard*, they must get one. The Bhandals were therefore entitled to have the planning merits of their alternative scheme considered either as part of the appeal process pursuant to s.177(1)(a) or as a freestanding application for planning permission without the restriction imposed by s.70C.

28. Since virtually any alternative scheme is likely to involve at least some element of new work, the inspector's approach, if correct, would have the effect not just of significantly reducing the power to grant planning permission on an appeal against an enforcement notice but also significantly reducing the application of s.70C. This would not just emasculate the utility of the Secretary of State's power to grant permission where some alternative scheme would be acceptable, but it would add delay since the planning authority would then be required to consider a freestanding retrospective application. For the reasons explained by Cranston J, this would be contrary to Parliament's apparent intention in this carefully calibrated statutory scheme.
29. Accordingly, I conclude that the inspector erred in his approach to s.177(1)(a). I therefore allow the Bhandals' appeal and remit the matter back for fresh consideration of options B and C under ground (a). For the avoidance of doubt, I do not suggest that there is only one proper answer upon such reconsideration. I repeat that the inspector would be entitled to take the view that the extent of the new work required by either of the alternative developments would be such that they do not properly fall within the statutory power to grant planning permission. What an inspector is not, however, entitled to say is that the mere fact that *any* new work would be required is a complete answer to an appeal upon ground (a).
30. If I am wrong in these conclusions, then I reject the complaint as to the adequacy of the inspector's reasons. Indeed, in the passages set out above he clearly explained that the alternative developments were not part of the matters enforced against because they involved some element of new work.

## **GROUND 2: OVER-ENFORCEMENT**

31. Having rejected the appeal upon ground (a), the inspector turned to consider the same proposed alternative developments further under ground (f). He concluded that the purpose of the enforcement action was to remedy the breach of planning control. He directed himself, at paragraph 32 of his decision that it was open to him to consider clear and obvious alternatives that would overcome the planning harm at less cost and disruption to the appellant than total demolition.
32. He then turned to each of the alternative developments. As to options B and C, he concluded, at paragraphs 34-35 of his decision:
  - “34. The appellants indicate that Alternative B would retain the sunroom as constructed, save for the canopy and the sloping roof. The approach would not therefore remedy the breach of planning control.

35. Alternative C would retain part of the unauthorised development, as indicated by the appellants. It would not, therefore, remedy the breach of planning control.”
33. I accept Ms Osmund-Smith’s submission that the inspector’s reasoning was circular since, by definition, any retention of the unauthorised development would not completely remedy the breach of planning control. It may, however, be that the inspector simply had in mind that, having already rejected these alternative developments under ground (a), the Bhandals could not obtain planning permission for the same under ground (f). Certainly, Ms Osmund-Smith does not suggest that the appeal could have succeeded upon ground (f) in respect of alternative developments B and C if the inspector was right to dismiss the appeal upon ground (a). Accordingly, ground 2 adds nothing to the analysis and of course the matter is in any event being remitted in order that a proper planning judgment can be made upon these alternative proposals. I do not therefore allow the appeal upon this ground.

### **GROUND 3: CLOSING THE HOLE IN THE WALL**

34. Option D (the installation of folding doors to fill the hole that would be created by compliance with the enforcement notice) was the Bhandals’ final fallback option. It was rejected by the inspector at paragraph 36 of his decision:
- “36. Alternative D would necessitate the installation of folding doors within the external wall of the building. The installation of folding doors within the front elevation of the building does not form part of the development enforced against. Thus, whilst the alternative would remove the sunroom subject of the notice, the variation of the notice to require the installation of folding doors would go beyond what is necessary to restore the land to its condition before the breach took place.”
35. Ms Osmund-Smith argues that the rejection of option D lacked any common sense. Prior to the breach, the building was enclosed by the previous attached sunroom. The removal of the replacement sunroom erected in breach of planning control would mean that the restaurant would be left with a gaping hole making the building both insecure and at the mercy of the elements. She argues that the inspector should have used his powers under s.176(1)(b) to vary the enforcement notice.
36. In my judgment, the court should not interfere with the inspector’s conclusion that the installation of folding doors does not form part of the development enforced against and that this was a proper case in which to extend time under ground (g) in order that the planning authority could consider the merits of the proposed solution. I reject the argument that the inspector should have used his powers under s.176(1)(b) to vary the notice in order to require the closure of the hole caused by the removal of the sunroom. The sub-section is in essence a “generously expressed slip rule” and cannot be used to obtain permission for alternative development D in this case: *Secretary of State for the Environment, Transport & the Regions v. Wyatt Brothers*

*(Oxford) Ltd* [2001] EWCA Civ 1560. Accordingly, I do not allow the appeal upon this ground.

CLAIM NO: CO/4504/2019

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
PLANNING COURT  
THE HONOURABLE MR JUSTICE PEPPERALL  
15 October 2020



BETWEEN:

**BALJIT SINGH BHANDAL  
BALBIR SINGH BHANDAL  
AMRIK SINGH BHANDAL**

**APPELLANTS**

and

**SECRETARY OF STATE FOR HOUSING  
COMMUNITIES AND LOCAL GOVERNMENT**

**1ST RESPONDENT**

**BROMSGROVE DISTRICT COUNCIL**

**2ND RESPONDENT**

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**ORDER**

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UPON HEARING Counsel for the Appellants and Counsel for the Secretary of State and the Second Respondent not appearing

AND UPON HANDING DOWN judgment

IT IS ORDERED THAT

1. The Appeal is allowed on Ground 1.
2. The First Respondent do pay the Appellants' costs in the agreed sum of £28,000 (inclusive of VAT) by 28 October 2020.

3. Any further consequential matters (including any applications for permission to appeal) shall be adjourned to a further hearing, unless the court subsequently directs that such matters can be dealt with on paper.
4. The parties do lodge a further agreed draft Order or, in default of agreement, submissions on any further consequential matters (including any applications for permission to appeal and their view as to whether such consequential matters can be dealt with on paper), by 10.30am on 3 November 2020.

CLAIM NO: CO/4504/2019

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
PLANNING COURT  
THE HONOURABLE MR JUSTICE PEPPERALL  
19 November 2020  
BETWEEN:



BALJIT SINGH BHANDAL  
BALBIR SINGH BHANDAL  
AMRIK SINGH BHANDAL

APPELLANTS

and

SECRETARY OF STATE FOR HOUSING  
COMMUNITIES AND LOCAL GOVERNMENT

1ST RESPONDENT

BROMSGROVE DISTRICT COUNCIL

2ND RESPONDENT

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ORDER

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UPON CONSIDERING the parties' written submissions upon the First Respondent's application for permission to appeal the order of 15 October 2020

IT IS ORDERED THAT permission to appeal be refused.

AND THE COURT CERTIFIES pursuant to rule 40.2(4) of the Civil Procedure Rules 1998 that any appeal lies to the Court of Appeal

REASONS

The reasons for refusing permission to appeal in this case are set out on form N460.

# Reasons for allowing or refusing permission to appeal (including referral to the Court of Appeal (Civil Division))



The judge must complete this form on allowing or refusing an application for permission to appeal at a hearing or trial

Title of case/claim

Bhandal v. (1) Secretary of State for Housing, Communities & Local Government (2) Bromsgrove District Council

Case/claim No

CO/4504/2019

Heard/tried before (insert name of Judge)

Date of hearing/trial

Mr Justice  
Pepperall

5 May 2020, 15 October 2020

Nature of  
Hearing/trial

Statutory appeal (s.289 Town & Country Planning Act 1990)

Result of  
Hearing/trial

Appeal allowed; matter remitted for a further determination by the Planning Inspector

Defendant's application for permission to appeal

Allowed

Refused

Brief reasons for decision to allow or refuse appeal  
(to be completed by the Judge):

R1 appears to argue two points:

(1) There is a compelling reason for the appeal court to consider the extent to which the inspector can grant planning permission in respect of any new works.

It is not argued that R1 has a real prospect of success on appeal, but only that there is a compelling reason for the case to be heard by the Court of Appeal. The judgment did not in any event seek to define the extent of the inspector's power. At para. 23, I:

- accepted that whether planning permission for a proposed alternative development was in relation to the whole/part of the matters comprising the breach (the statutory test in s.177(1)(a)) was a matter of planning judgment for the inspector;
- accepted that the extent of new work in any proposal might indicate that it did not relate to a part of the development as built; but
- concluded that the inspector erred in law in taking the narrow view that any new work at all took the alternative development outside s.177(1)(a) and was itself determinative of the issue.

Such conclusions were not unsupported by authority, but consistent with the authorities considered at paras 13-24. There is no apparently compelling reason for the appeal to be heard, but, in any event, the Court of Appeal is best placed to determine whether it wishes to hear an appeal upon this ground.

(2) I was wrong to find that such conclusion was fortified by a consideration of s.177 in its wider statutory context

This ground is not freestanding since the matters set out in paras 25-28 fortified my conclusions already reached on the basis of considering s.177 in isolation. If I was wrong to regard these matters as supporting my judgment then such conclusion would not of itself lead to any appeal being allowed. R1 is right to submit that neither party addressed the interaction between ss.70C and 177 in their written submissions. Section 70C was, however, addressed in the course of oral argument.

As is evident from para 25, I considered *Chesterton* among other authorities. I do not understand the relevance of the passage cited at para. 38 of *Chesterton*. This case did not concern s.174(2A).

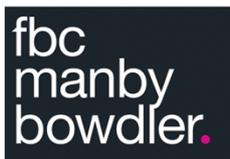
Judge's signature

i

If permission is given the judge must also complete the reverse of this form

**Note:** The appellant must file a copy of this completed form at the appeal court with the appellant's notice when issuing the appeal.

**N460 Reasons for allowing or refusing permission to appeal and referred to the Court of Appeal**



S O L I C I T O R S

Routh House  
Hall Court  
Hall Park Way  
Telford TF3 4NJ

Attention: Nicola Davison  
The Planning Inspectorate  
Room 3B  
Temple Quay House  
2 The Square  
Bristol BS1 6PN

**Our ref** SRT/SRT/BHA85/8  
**Your ref** 3219678  
**Date** 4 February 2021

**By email only: [teame1@planninginspectorate.gov.uk](mailto:teame1@planninginspectorate.gov.uk)**

Dear Ms Davison

**Appeal Reference: APP/P1805/C/19/3219678**  
**(Linked cases: APP/P1805/C/19/3219679, APP/P1805/C/19/3219680)**  
**Appellant: Mr Baljit Singh Bhandal, Mr Balbir Singh Bhandal, Mr Amrik Singh Bhandal**  
**Property: Four Stones Restaurant, Adams Hill, Clent, Stourbridge, Worcestershire, DY9 9PS**

Further to your letter dated 7 January 2021 regarding the above matter, we reply to the queries raised, on behalf of the Appellant, as follows:

**1. Any material change in circumstances which may have arisen since the original appeal decision letter was issued:**

- 1.1. The Appellant is not aware of any changes in to the Development Plan since the original appeal was determined. Indeed, the Council's website indicates that work on the District Plan Review has stalled pending greater certainty on the Government's approach to planning reform. Accordingly there is no update at this stage.
- 1.2. An application for planning permission was made on behalf of the Appellant on 13 April 2020, for '*Glazed sun room (part retrospective): remove sloped roof and replace with flat aluminium-framed glazed roof, retaining the remaining structure as existing*', which application was allocated reference 20/00443/FUL; it was confirmed as valid by the Local Authority on 7 May 2020, and the determination deadline given by the Local Authority was 8 June 2020.
- 1.3. This scheme, in essence, reflects what was described as Option B in the Enforcement Appeal case i.e. the retention of the Sun Room, subject to the alteration of the sloping roof, to provide in its place a flat glazed roof.
- 1.4. A copy of the Application documents submitted to the Local Authority are enclosed herewith as follows:
  1. Application Form
  2. Location Plan
  3. Existing Plans and Elevations - FS10
  4. Proposed Plans and Elevations - FS21A
  5. Supporting Submission
  6. Counsel Opinion
  7. Drawing ref FS/11 Rev a – included for background reference purposes.

[www.fbcmb.co.uk](http://www.fbcmb.co.uk)    [@FBCManbyBowdler](https://twitter.com/FBCManbyBowdler)

Authorised and Regulated by the Solicitors Regulation Authority - No 487405.

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- 7.1. The application was submitted by the Applicant in seeking to adopt a collaborative approach to the site with the Local Authority, in light of the Inspector's comments in the Enforcement Appeal Decision Letter dated 17 October 2019, in particular paragraph 51, in which the Inspector, noting that it was clear by the grant of planning permission in 2016 that some form of extension on this footprint is acceptable, indicated it would be reasonable to extend the time for compliance with the Enforcement Notice to allow the parties to explore alternatives that would overcome the harm that had been identified.
- 7.2. By email of 20 May 2020, the Local Authority proposed that the Applicant submit a s106 Unilateral Undertaking to the effect that if planning permission were to be granted, it would, in effect, be implemented within a set timescale.
- 7.3. Since that time, we have been seeking, on behalf of the Applicant, to engage with the Local Authority as to the form and content of such s106 Undertaking/Agreement, with limited progress having been made due to the limited degree of engagement on the part of the Local Authority to date.
- 7.4. Any decision which is issued in connection with this application is plainly a material consideration in the context of the redetermination, and we will of course keep the Inspectorate updated on the progress of that.

**8. Comment on the specific issue(s) upon which the appeal decision was quashed:**

- 8.1. The Inspector determining the appeal will have the relatively straightforward and succinct judgment of Mr Justice Pepperall which sets out that the challenge in the High Court was allowed on ground 1, and which should be read as a whole. However, the following commentary seeks to outline the arguments made, and distil the ratio of the case.
- 8.2. Ground 1 of the Appellants' challenge alleged that the Inspector misinterpreted section 177(1) of the 1990 Act in relation to the Alternative Developments which had been proposed, namely, Alternative Developments B and C. Specifically, ground 1 concerned paragraphs 18-29 of the Decision Letter ("DL"), and the Inspector's position that new works or development, as a matter of principle (not judgement), cannot form part of the matters enforced against in the EN. The Inspector's position was that because alternatives B and C included "new works", they were excluded from the scope of Section 177(1) of the Act; see DL/24 and DL/27.
- 8.3. However, it was argued that was the wrong approach for the following reasons:
  - a. The alleged breach of planning control at part 3 of the EN is the erection of a replacement glazed sun room without planning permission.
  - b. Both Alternative Developments B and C proposed a glazed sun room. The nature and function of the sun room would remain the same.
  - c. The proposals reduce the size of the unauthorised development through minor modifications to the roof. The resulting structures would still be wholly contained within the footprint and volume of the sun room as built and enforced against.
  - d. Both proposals can properly be regarded as a "part" of the development as built.
  - e. The Inspector failed to explain why "*new works in the formation of a roof*" precluded the alternative developments B and C from falling within section 177(a) of the Act in principle.

- f. That narrow approach is contrary to **Ahmed v. Secretary of State for Communities & Local Government** [2014] EWCA Civ 566 and finds no support within the wording of the Act. In **Ahmed** partial demolition of the building and remodelling was inevitably required to reduce the four storey flat roof building in that instance to the previously consented three storey butterfly roof building (see para. 17). The Court rejected the argument that such modifications precluded an alternative from falling within the scope of section 177(1) if the alternative was such that a development in accordance with the 2005 scheme could be regarded as a “part” of the development as built; see paragraphs 19(4) and 27.
- 8.4. It was argued by the Appellants that the approach promoted by the Inspector would have the effect of rendering the “obvious alternative” doctrine obsolete. An “alternative” development is by definition, different to the development that has been enforced against. If works of modification to an unlawful structure exclude such alternatives from the operation of the doctrine, it become entirely unclear how the doctrine is to operate in practice.
- 8.5. Accordingly, the Inspector was not, and should not have regarded himself as fettered by the requirement for works to form a new roof. There is nothing within the Act, or section 177(1) that prevented the Inspector from using his powers pursuant to section 177(1) in the circumstances and in the way that he assumed.
- 8.6. It should be noted that the defendant Secretary of State argued that the Inspector was merely exercising his planning judgement in focusing on the new works, and that the approach should be seen as a convenient label for the statutory question under section 177(1) (see para 24 of the Judgement).
- 8.7. The Judge rejected that argument and agreed with the submissions made on behalf of the Appellant. The Judge held as follows in three key paragraphs of the judgment:

*“23. I accept that whether planning permission for any proposed alternative development would be in relation to the whole or part of the matters comprising the breach of planning control is a question of planning judgment for the inspector with which the court should be slow to interfere. Further, I acknowledge that there is no need to take a strained interpretation of s.177(1)(a). I am, however, satisfied that the inspector erred in law in taking a very narrow view of his power to grant planning permission upon the Bhandals’ appeal. The essential question was not whether the proposed alternative development required some additional work, but rather whether it could properly be described as relating to the whole or part of the matters enforced against. The extent of new work required by an alternative development might well indicate that, upon analysis, it does not relate to a part of the development as built. The need for new work will therefore be an important factor in the exercise of planning judgment. It is not, however, right to say that the need for any new work at all is determinative of the matter.*

...

*28. Since virtually any alternative scheme is likely to involve at least some element of new work, the inspector’s approach, if correct, would have the effect not just of significantly reducing the power to grant planning permission on an appeal against an enforcement notice but also significantly reducing the application of s.70C. This would not just emasculate the utility of the Secretary of State’s power to grant permission where some alternative scheme would be acceptable, but it would add delay since the planning authority would then be required to consider a freestanding*

*retrospective application. For the reasons explained by Cranston J, this would be contrary to Parliament's apparent intention in this carefully calibrated statutory scheme.*

*29. Accordingly, I conclude that the inspector erred in his approach to s.177(1)(a). I therefore allow the Bhandals' appeal and remit the matter back for fresh consideration of options B and C under ground (a). For the avoidance of doubt, I do not suggest that there is only one proper answer upon such reconsideration. I repeat that the inspector would be entitled to take the view that the extent of the new work required by either of the alternative developments would be such that they do not properly fall within the statutory power to grant planning permission. What an inspector is not, however, entitled to say is that the mere fact that any new work would be required is a complete answer to an appeal upon ground (a)."*

8.8. Accordingly, and as set out at para 17 of the Judgment:

- (i) The inspector first had to exercise his or her planning judgment to determine whether planning permission for the proposed alternative development would be in relation to the whole or part of the sunroom that had been erected in breach of planning control.
- (ii) If the answer to such question was affirmative, the inspector would then have to exercise his or her further planning judgment to consider whether, after having regard to the applicable development plan and all other material considerations, permission should be granted for the proposed alternative development.

8.9. Further submissions will made in due course as to why alternatives B and C are part of the development of the development enforced against.

## **9. Proposed format of the re-determined appeal:**

The Appellants request that the appeal be determined following a hearing. It may be of assistance to the Inspector to hear further submissions as to the High Court decision, and other relevant Judgments relied upon in the case. Furthermore, in light of the previous (now quashed) decision, the Appellants would welcome the opportunity to make further legal submissions on the application of the Mansi doctrine, and Article 1 of the First Protocol of the Human Rights Act 1998, since without modification, the effect of the notice is to leave a hole in the wall of the Appellants building such that the Appellants are prevented from carrying on their lawful business activities. We do not consider that a written representations procedure would allow for these issues to be adequately scrutinised.

Yours sincerely



**Suzanne Tucker**  
**FBC Manby Bowdler LLP**  
**Email: S.Tucker@fbcmb.co.uk**  
**Direct Dial: 01952 208426**



Application for Planning Permission.  
Town and Country Planning Act 1990

**Publication of applications on planning authority websites.**

Please note that the information provided on this application form and in supporting documents may be published on the Authority's website. If you require any further clarification, please contact the Authority's planning department.

**1. Site Address**

Number	<input type="text"/>
Suffix	<input type="text"/>
Property name	Four Stones Restaurant
Address line 1	Adams Hill
Address line 2	<input type="text"/>
Address line 3	<input type="text"/>
Town/city	Clent
Postcode	DY9 9PS

Description of site location must be completed if postcode is not known:

Easting (x)	392625
Northing (y)	279823

Description	<input type="text"/>
-------------	----------------------

**2. Applicant Details**

Title	Other
Other	Messrs
First name	AS, BS and BS
Surname	Bhandal
Company name	<input type="text"/>
Address line 1	c/o Four Stones Restaurant
Address line 2	Adams Hill
Address line 3	<input type="text"/>
Town/city	Clent

## 2. Applicant Details

Country	<input type="text"/>
Postcode	<input type="text" value="DY9 9PS"/>
Primary number	<input type="text"/>
Secondary number	<input type="text"/>
Fax number	<input type="text"/>
Email address	<input type="text"/>

Are you an agent acting on behalf of the applicant?

Yes  No

## 3. Agent Details

Title	<input type="text" value="Miss"/>
First name	<input type="text" value="Suzanne"/>
Surname	<input type="text" value="Tucker"/>
Company name	<input type="text" value="FBC Manby Bowdler LLP"/>
Address line 1	<input type="text" value="Routh House Hall Court"/>
Address line 2	<input type="text" value="Hall Park Way"/>
Address line 3	<input type="text"/>
Town/city	<input type="text" value="Telford"/>
Country	<input type="text"/>
Postcode	<input type="text" value="TF3 4NJ"/>
Primary number	<input type="text"/>
Secondary number	<input type="text"/>
Fax number	<input type="text"/>
Email	<input type="text"/>

## 4. Site Area

What is the measurement of the site area?  
(numeric characters only).

Unit

## 5. Description of the Proposal

Please describe details of the proposed development or works including any change of use.

If you are applying for Technical Details Consent on a site that has been granted Permission In Principle, please include the relevant details in the description below.

Has the work or change of use already started?

Yes  No

## 5. Description of the Proposal

If yes, please state the date when the work or change of use started (date must be pre-application submission)  
DD/MM/YYYY

19/04/2017

Has the work or change of use been completed?

Yes  No

## 6. Existing Use

Please describe the current use of the site

Restaurant

Is the site currently vacant?

Yes  No

**Does the proposal involve any of the following? If Yes, you will need to submit an appropriate contamination assessment with your application.**

Land which is known to be contaminated

Yes  No

Land where contamination is suspected for all or part of the site

Yes  No

A proposed use that would be particularly vulnerable to the presence of contamination

Yes  No

## 7. Materials

Does the proposed development require any materials to be used externally?

Yes  No

**Please provide a description of existing and proposed materials and finishes to be used externally (including type, colour and name for each material):**

Doors	
Description of existing materials and finishes (optional):	Double glazed folding doors, powder coated aluminium finish to frames (anthracite grey)
Description of proposed materials and finishes:	Double glazed folding doors, powder coated aluminium finish to frames (anthracite grey)

Walls	
Description of existing materials and finishes (optional):	Double glazed panels, powder coated aluminium finish to frames (anthracite grey)
Description of proposed materials and finishes:	Double glazed panels, powder coated aluminium finish to frames (anthracite grey)

Roof	
Description of existing materials and finishes (optional):	Sloped roof comprising Double glazed panels, powder coated aluminium finish to frames
Description of proposed materials and finishes:	Flat roof comprising Double glazed panels, powder coated aluminium finish to frames

Are you supplying additional information on submitted plans, drawings or a design and access statement?

Yes  No

If Yes, please state references for the plans, drawings and/or design and access statement

Location Plan  
Plans and Elevations - Dwg FS/21a dated April 2019  
Supporting Legal Submission

## 7. Materials

Design and Access Statement with Heritage Statement

## 8. Pedestrian and Vehicle Access, Roads and Rights of Way

Is a new or altered vehicular access proposed to or from the public highway?  Yes  No

Is a new or altered pedestrian access proposed to or from the public highway?  Yes  No

Are there any new public roads to be provided within the site?  Yes  No

Are there any new public rights of way to be provided within or adjacent to the site?  Yes  No

Do the proposals require any diversions/extinguishments and/or creation of rights of way?  Yes  No

## 9. Vehicle Parking

Does the site have any existing vehicle/cycle parking spaces or will the proposed development add/remove any parking spaces?  Yes  No

## 10. Trees and Hedges

Are there trees or hedges on the proposed development site?  Yes  No

And/or: Are there trees or hedges on land adjacent to the proposed development site that could influence the development or might be important as part of the local landscape character?  Yes  No

**If Yes to either or both of the above, you may need to provide a full tree survey, at the discretion of your local planning authority. If a tree survey is required, this and the accompanying plan should be submitted alongside your application. Your local planning authority should make clear on its website what the survey should contain, in accordance with the current 'BS5837: Trees in relation to design, demolition and construction - Recommendations'.**

## 11. Assessment of Flood Risk

Is the site within an area at risk of flooding? (Refer to the Environment Agency's Flood Map showing flood zones 2 and 3 and consult Environment Agency standing advice and your local planning authority requirements for information as necessary.)  Yes  No

**If Yes, you will need to submit a Flood Risk Assessment to consider the risk to the proposed site.**

Is your proposal within 20 metres of a watercourse (e.g. river, stream or beck)?  Yes  No

Will the proposal increase the flood risk elsewhere?  Yes  No

**How will surface water be disposed of?**

Sustainable drainage system

Existing water course

Soakaway

Main sewer

Pond/lake

## 12. Biodiversity and Geological Conservation

**Is there a reasonable likelihood of the following being affected adversely or conserved and enhanced within the application site, or on land adjacent to or near the application site?**

**To assist in answering this question correctly, please refer to the help text which provides guidance on determining if any important biodiversity or geological conservation features may be present or nearby; and whether they are likely to be affected by the proposals.**

a) Protected and priority species:

## 12. Biodiversity and Geological Conservation

- Yes, on the development site  
 Yes, on land adjacent to or near the proposed development  
 No

b) Designated sites, important habitats or other biodiversity features:

- Yes, on the development site  
 Yes, on land adjacent to or near the proposed development  
 No

c) Features of geological conservation importance:

- Yes, on the development site  
 Yes, on land adjacent to or near the proposed development  
 No

## 13. Foul Sewage

Please state how foul sewage is to be disposed of:

- Mains Sewer  
 Septic Tank  
 Package Treatment plant  
 Cess Pit  
 Other  
 Unknown

Are you proposing to connect to the existing drainage system?

Yes  No  Unknown

## 14. Waste Storage and Collection

Do the plans incorporate areas to store and aid the collection of waste?

Yes  No

Have arrangements been made for the separate storage and collection of recyclable waste?

Yes  No

## 15. Trade Effluent

Does the proposal involve the need to dispose of trade effluents or trade waste?

Yes  No

## 16. Residential/Dwelling Units

Due to changes in the information requirements for this question that are not currently available on the system, if you need to supply details of Residential/Dwelling Units for your application please follow these steps:

1. Answer 'No' to the question below;
2. Download and complete this supplementary information template (PDF);
3. Upload it as a supporting document on this application, using the 'Supplementary information template' document type.

This will provide the local authority with the required information to validate and determine your application.

Does your proposal include the gain, loss or change of use of residential units?

Yes  No

## 17. All Types of Development: Non-Residential Floorspace

Does your proposal involve the loss, gain or change of use of non-residential floorspace?

Yes  No

If you have answered Yes to the question above please add floorspace details in the following table:

## 17. All Types of Development: Non-Residential Floorspace

Use Class	Existing gross internal floorspace (square metres)	Gross internal floorspace to be lost by change of use or demolition (square metres)	Total gross new internal floorspace proposed (including changes of use) (square metres)	Net additional gross internal floorspace following development (square metres)
A3 - Restaurants and cafes	286.6	15.6	15.6	0
Total	286.6	15.6	15.6	0

For hotels, residential institutions and hostels please additionally indicate the loss or gain of rooms:

## 18. Employment

Are there any existing employees on the site or will the proposed development increase or decrease the number of employees?  Yes  No

Please complete the following information regarding employees:

Type	Full-time	Part-time	Equivalent number of full-time
Existing employees	4	18	
Proposed employees	4	18	

## 19. Hours of Opening

Are Hours of Opening relevant to this proposal?  Yes  No

If known, please state the hours of opening (e.g. 15:30) for each non-residential use proposed:

Use	Monday to Friday	Saturday	Sunday and Bank Holidays	Unknown
A3 - Restaurants and cafes	Start Time: 11:00 End Time: 22:00	Start Time: 11:00 End Time: 22:00	Start Time: 11:00 End Time: 22:00	

## 20. Industrial or Commercial Processes and Machinery

Please describe the activities and processes which would be carried out on the site and the end products including plant, ventilation or air conditioning. Please include the type of machinery which may be installed on site:

Is the proposal for a waste management development?  Yes  No

**If this is a landfill application you will need to provide further information before your application can be determined. Your waste planning authority should make it clear what information it requires on its website**

## 21. Hazardous Substances

Does the proposal involve the use or storage of any hazardous substances?  Yes  No

## 22. Site Visit

Can the site be seen from a public road, public footpath, bridleway or other public land?  Yes  No

## 22. Site Visit

If the planning authority needs to make an appointment to carry out a site visit, whom should they contact?

- The agent  
 The applicant  
 Other person

## 23. Pre-application Advice

Has assistance or prior advice been sought from the local authority about this application?

Yes  No

If Yes, please complete the following information about the advice you were given (this will help the authority to deal with this application more efficiently):

Officer name:

Title

First name

Surname

Reference

Date (Must be pre-application submission)

Details of the pre-application advice received

## 24. Authority Employee/Member

With respect to the Authority, is the applicant and/or agent one of the following:

- (a) a member of staff  
(b) an elected member  
(c) related to a member of staff  
(d) related to an elected member

It is an important principle of decision-making that the process is open and transparent.

Yes  No

For the purposes of this question, "related to" means related, by birth or otherwise, closely enough that a fair-minded and informed observer, having considered the facts, would conclude that there was bias on the part of the decision-maker in the Local Planning Authority.

Do any of the above statements apply?

## 25. Ownership Certificates and Agricultural Land Declaration

**CERTIFICATE OF OWNERSHIP - CERTIFICATE A - Town and Country Planning (Development Management Procedure) (England) Order 2015 Certificate under Article 14**

I certify/The applicant certifies that on the day 21 days before the date of this application nobody except myself/the applicant was the owner\* of any part of the land or building to which the application relates, and that none of the land to which the application relates is, or is part of, an agricultural holding\*\*

\* 'owner' is a person with a freehold interest or leasehold interest with at least 7 years left to run. \*\* 'agricultural holding' has the meaning given by reference to the definition of 'agricultural tenant' in section 65(8) of the Act.

**NOTE: You should sign Certificate B, C or D, as appropriate, if you are the sole owner of the land or building to which the application relates but the land is, or is part of, an agricultural holding.**

Person role

- The applicant  
 The agent

Title

First name

Surname

## 25. Ownership Certificates and Agricultural Land Declaration

Declaration date  
(DD/MM/YYYY)

06/04/2020

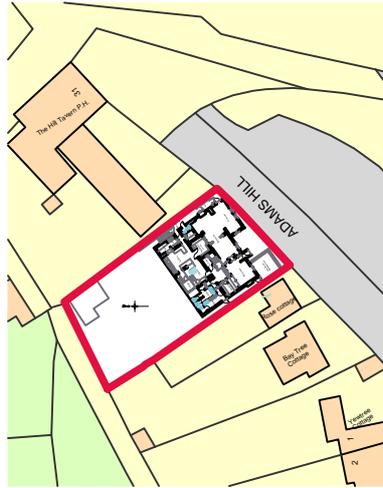
Declaration made

## 26. Declaration

I/we hereby apply for planning permission/consent as described in this form and the accompanying plans/drawings and additional information. I/we confirm that, to the best of my/our knowledge, any facts stated are true and accurate and any opinions given are the genuine opinions of the person(s) giving them.

Date (cannot be pre-  
application)

06/04/2020

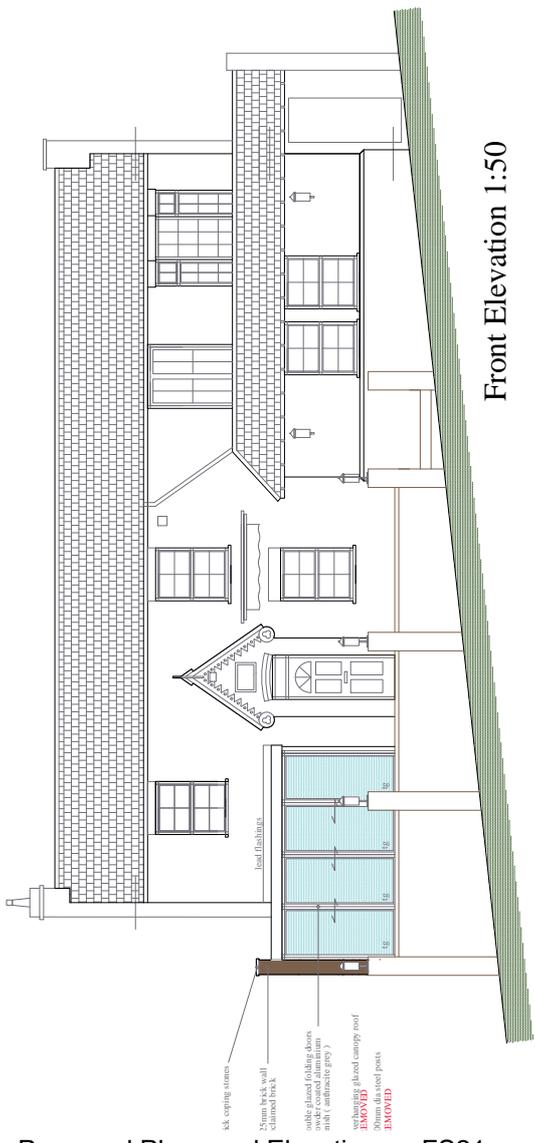


O.S. Plan 1:1250

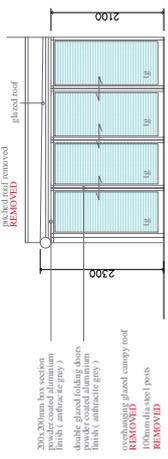
TITLE:	Location Plan The Four Stones Restaurant Adams Hill Client DY9 9PS	REV:	-
DRAWING NO.	FS/22	DATE:	March 2020
SCALE:	1:1250		
<b>NCR</b> ARCHITECTURAL DESIGN & TOWN PLANNING 8 Windsor Road Halesowen West Midlands B63 4BE		Mob :	07956 805316
			neil@nford@btinternet.com



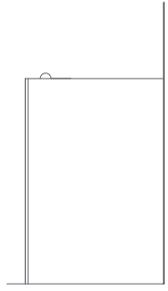
# PROPOSED ALTERATIONS



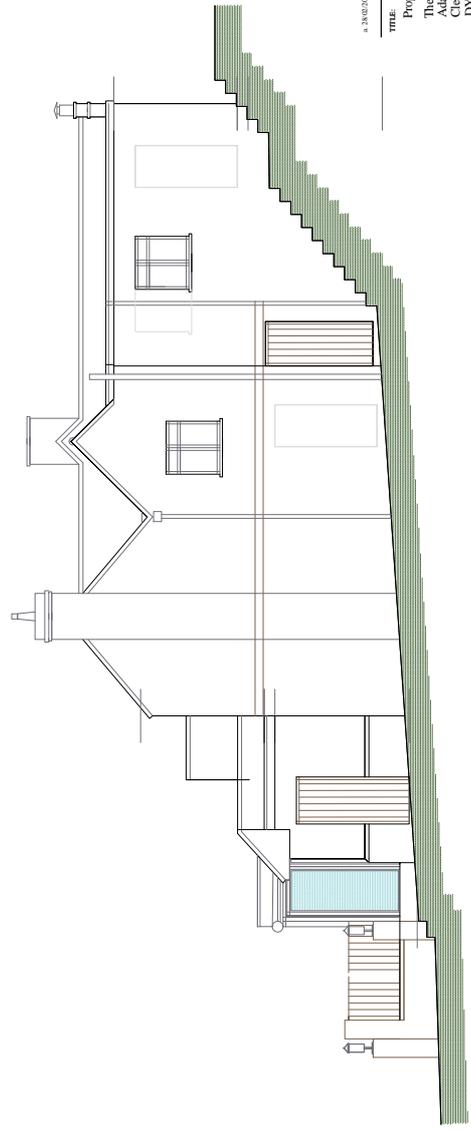
Front Elevation 1:50



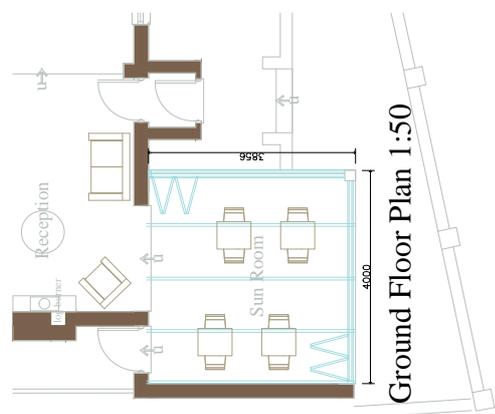
Side Elevation 1:50



Side Elevation 1:50



Side Elevation 1:50



Ground Floor Plan 1:50

a. 28.02.2020 - side elevation added  
 TITLE: Proposed Alteration To Sun Room  
 The Four-Stones Restaurant  
 Adams Hill  
 Client  
 DY9 9PS  
 DRAWING NO: FS21  
 REV: U  
 DATE: April 2019  
 SCALE: 1:50  
**NCR** ARCHITECTURAL DESIGN & TOWN PLANNING  
 14 St. Pauls Place,  
 Stonehouse,  
 Gloucestershire,  
 GL10 1TA  
 Mob: 07956 803316  
 ncr@ncrdesign.com

**DATE: APRIL 2020**

**TOWN AND COUNTRY PLANNING ACT 1990**

**APPLICATION FOR FULL PLANNING PERMISSION**

**RELATING TO THE SUN ROOM**

**AT**

**THE FOUR STONES RESTAURANT, CLENT, STOURBRIDGE DY9 9PS**

**BY**

**MESSRS BALJIT SINGH, AMRIK SINGH AND BALBIR SINGH BHANDAL**

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**SUPPORTING SUBMISSION**

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FBC MANBY BOWDLER LLP  
ROUTH HOUSE  
HALL COURT  
HALL PARK WAY  
TELFORD  
TF3 4NJ  
Ref: SRT/BHA85/8

1. This application is made on behalf of Amrik Singh Bhandal, Balbir Singh Bhandal and Baljit Singh Bhandal (“the Applicants”) for planning permission for a sun room to the front of the Applicants’ restaurant known as Four Stones, Clent, Stourbridge, DY9 9PS (“the Property”).

**Background.**

2. Planning permission was granted on 6 July 2016 for the demolition of an existing front sun room, and replacement with a new flat roof sun room under Planning Reference 16/0403 (“the Permission”). In due course, a sun room was erected, but it differed in some respects to that which had been permitted, the primary differences being a sloping roof and oversailing canopy supported by pillars. A retrospective planning application was submitted to seek to regularise the development, allocated reference 17/00646/FUL, for which permission was refused on 19 July 2017. The Appellants appealed that refusal to the Secretary of State, which was considered under Appeal Reference APP/P1805/W/17/3191833, and was dismissed on 9 April 2018 (“the s78 Appeal”).
3. On 27 November 2018, the Council issued an Enforcement Notice, against which an appeal was submitted and allocated reference APP/P1805/C/19/3219678 (“the Enforcement Appeal”), which appeal was dismissed on 17 October 2019. During the course of the Enforcement Appeal, the oversailing canopy and supporting pillars were removed, leaving in place a sun room with sloping roof which remains in situ presently (“the Sun Room”). The Applicants are pursuing a statutory appeal of that decision in the High Court pursuant to s289 of the Town and Country Planning Act 1990 (“the Act”). Permission to appeal was granted by HHJ Cooke 13 December 2019 following an oral hearing, and a substantive hearing is listed for 5 May 2020.
4. A separate legal submission accompanies this application, prepared by the Appellant’s Counsel in that case, but it is to be noted that the Inspector, whilst dismissing the Enforcement Appeal, highlighted that:

*“Nonetheless, it is clear by the grant of planning permission in 2016, that the Council considers some form of extension on this footprint is acceptable in terms of its impact on Green Belt and the character and appearance of the area. There are several alternatives which the appellants have put forward, three of which I have been unable to consider the planning merits of because they do not form part of the development as enforced against. It therefore seems to me that it would be reasonable to extend the time period for compliance to nine months to allow the parties the opportunity to explore alternatives which would overcome the harm I have identified in respect of the appeal on ground (a).”<sup>1</sup>*

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<sup>1</sup> Decision Letter in the Enforcement Appeal, paragraph 51.

5. The harms identified were a '*harmful effect on openness*' arising as a consequence of the greater volume of the sun room complained of in the Enforcement Notice, by comparison with the authorised scheme, and a failure to preserve or enhance the character and appearance of the Clent Conservation Area, which the Inspector categorised as 'less than substantial harm'<sup>2</sup>, to which great weight was attributed.
6. This proposal is submitted on the basis that it overcomes any such perceived harm.

### **The Proposal.**

7. The proposed development is for the retention of the Sun Room as constructed, save that the sloped roof is to be removed, together with the upper glazed panels on the front and sides, facilitating the replacement of the sloped roof with a flat glazed roof, as shown on Dwg. FS/21a.
8. It is the Applicants' case that this proposal removes all elements of the scheme that represent a material difference between the Sun Room as built and the scheme authorised by the Permission.
9. The key factors that the Council should bear in mind in considering this application are that:
  - i. the principle of a replacement sun room in this location, with the same footprint, and general design and detailing was approved by the Local Authority as being acceptable through the grant of the Permission (the aluminium framed and glazed design with bi-fold doors having been approved by the Council in writing);
  - ii. the proposed sun room will differ from the authorised scheme only in the following ways:
    - the front elevation of the Sun Room comprises four glazed panels rather than 5 as shown on the approved plans; this is not considered to be a material difference;
    - the upper section of the front elevation of the Sun Room (above the main glazed panels) which is currently glazed, will be removed as part of the removal of the sloped roof section to be replaced with a flat glazed roof; consequently the height of the sun room will be lower than the scheme approved under the Permission; this may be regarded as an enhancement to the approved scheme, reducing the height and volume of the sun room by comparison with the approved scheme, and potentially lessening the visual impact of the sun room on the restaurant frontage;
  - iii. the glazed design, aluminium frame, bi-fold doors, and footprint, are in accordance with the Permission; the only material difference being the reduction in height and volume which is considered to be an enhancement to the permitted scheme. The impact of the sun room visually, on the frontage of the building, will be improved, as

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<sup>2</sup> Evident from the reference to Para 196 NPPF at Paragraph 12 of the Enforcement Appeal Decision Notice

- the height of the sun room will align with the eaves height of the restaurant area on the other side of the main entrance door to the restaurant, and there will no longer be any interruption to the exterior view of the upper floor windows;
- iv. it is notable that the Inspector's decision to give the Permission limited weight as a fall-back arose in light of his conclusion that the approved scheme would have a less harmful effect on the Green Belt and the Clent Conservation Area than the current Sun Room<sup>3</sup>;
  - v. in any event, the Permission remains capable of lawful implementation (notwithstanding the conclusions of the Inspector in the Enforcement Appeal in that regard), and the Permission is nonetheless a material consideration to be given significant weight in the decision making process;
  - vi. the consequence of compliance with the Enforcement Notice, will be to leave a gaping hole in the frontage of the building, which constitutes a harm to the Conservation Area as a heritage asset, as well as to the integrity of the building itself, and to the business that is operated from it; an appropriate alternative must be identified which addresses those harms; and
  - vii. the scheme now being proposed was put forward in the Enforcement Appeal, as Option B. In considering Option B, the Inspector stated, at paragraph 25 - "*Regardless of the merits of the alternative, it is not therefore open to me to grant planning permission for it under the appeal on ground (a).*" The Inspector's stance in that regard forms a key part of the matters to be examined in the s289 hearing; the important point however, is that the Inspector saw merit in this alternative. Whilst the Inspector was not satisfied (based on the evidence available) that the Permission remained capable of implementation; he nonetheless treated the Permission as the appropriate baseline against which to compare the alternatives under consideration.

### **The Permission as a Material Consideration.**

10. The status of a previous planning permission, whether extant or otherwise, as being capable of constituting a material consideration in planning decisions was identified in South Oxfordshire District Council v Secretary of State for Environment [1981] 1 WLR 1092. This was reiterated and confirmed in North Wiltshire District Council v Secretary of State for the Environment and others [1992] 3 PLR 113, in which Mann LJ stated that:

*"It was not disputed in argument that a previous appeal decision is capable of being a material consideration. The proposition is in my judgment indisputable. One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency in the appellate process. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system. I do*

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<sup>3</sup> Para 14 Decision Letter dated 17 October 2019

*not suggest, and it would be wrong to do so, that like cases must be decided alike. An inspector must always exercise his own judgment. He is therefore free up on consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision.*

*To state that like cases should be decided alike presupposes that the earlier case is alike and is not distinguishable in some relevant respect. If it is distinguishable then it usually will lack materiality by reference to consistency although it may be material in some other way. Where it is indistinguishable then ordinarily it must be a material consideration. A practical test for the inspector is to ask himself whether, if I decide this case in a particular way, am I necessarily agreeing or disagreeing with some critical aspect of the decision in the previous case? The areas for possible agreement or disagreement cannot be defined but they would include interpretation of policies, aesthetic judgments and assessment of need. Where there is disagreement then the inspector must weigh the previous decision and give his reasons for departure from it. These can on occasion be short, for example in the case of disagreement on aesthetics. On other occasions they may have to be elaborate.”<sup>4</sup>*

11. It is notable that Paragraph 49 of the NPPG<sup>5</sup> states, in the context of appeal costs, that *“Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:*

- ...
- *failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances*
- ...”

12. Whilst there have been two appeals dismissed since the Permission was granted, those decisions relate to a different form of development than that now being proposed. The s78 Appeal related to the Sun Room with its sloping roof plus the oversailing canopy supported by pillars which extended the footprint and volume of the sun room, as well as its height, beyond that authorised by the Permission, and therefore presented a different degree of physical impact and visual impression to the current proposal; the Inspector in the s78 Appeal focussed very clearly on the impact of the oversailing canopy as the primary cause for concern. Whilst the Enforcement Appeal concerned the Sun Room as now in situ (the pillars and oversailing canopy having been removed), that scheme also differed from what is now proposed, and the Inspector concluded that he did not have the power to grant permission for the *current* proposal as an ‘alternative scheme’ through the application of grounds (a) and (f) (that is the subject of the ongoing High Court case and therefore

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<sup>4</sup> [1992] 3 PLR 113 at 123

<sup>5</sup> Reference ID: 16-049-20140306

remains unresolved, and it is the Appellants' submission in that case that the Inspector failed to properly consider the alternatives put), but for the present purposes, it is clear that neither of the appeal decisions represent a change in circumstances since the Permission was granted that would displace the significance of the Permission as a material consideration to be given weight in the assessment of the current scheme.

13. There have been no material changes to the Property since 2016. At the point when the Permission was granted, a pre-existing conservatory-style extension to the original building comprising the restaurant was present on site, and the approved scheme was a replacement for that structure, which was a similar footprint height and volume to what was then being proposed, but was considered less suitable in design terms by comparison with the permitted scheme<sup>6</sup>. Notwithstanding that the original conservatory-style sun room has now been removed (having been directly replaced with the Sun Room), its presence remains part of the relevant planning history of the Property, and its removal formed part of the development authorised by the Permission. Its former presence on the site cannot therefore be discounted in the consideration of the current proposal, and is taken as the baseline position for the current scheme.
14. There has been a material change in the policy position arising since the grant of the Permission : the Development Plan that applied at the time when the Permission was granted comprised the saved policies of the Bromsgrove District Local Plan January 2004 ("the 2004 LP"), the policies cited as having been relevant in the Permission were policies DS2 Green Belt Development Criteria; DS13 Sustainable Development; S35A Development in Conservation Areas; S36 Design of Development in Conservation Areas; C4 Criteria for Assessing Development Proposals; and TR11 Access and Off-Street Parking. The relevant Development Plan now applicable is the Bromsgrove District Plan 2011-2030, adopted January 2017 ("the Current LP"); the relevant equivalent policies being BDP4 - Green Belt; BDP19 - High Quality Design; and BDP20 - Managing the Historic Environment.
15. The relevant extracts of these policies are set out in the table at Appendix 2 hereto, from which it is clear that the impact of the change in policy is either neutral or positive in the context of the proposed scheme. The proposed scheme will be assessed against the Current LP below, but it is notable here that one of the principal policies of relevance to the grant of the Permission, saved 2004 LP policy DS2, did not include the equivalent provision for proportionate extensions to non-residential buildings, nor for the replacement of a building<sup>7</sup> to be put to the same use and which is not be materially larger than the building it replaces, to be considered exceptions to the generality of inappropriate development as is

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<sup>6</sup> Please refer to Appendix 1 for an image of the pre-existing structure, alongside the Existing Plans and Elevations submitted with this application and which form the starting point for this application – Dwg Reference FS/10.

<sup>7</sup> which pursuant to s336(1) Town and Country Planning Act 1990 includes part of a building

now provided for in BDP4.4 (d) and (e) of the Current LP; the policy at the time the Permission was granted was therefore less favourable to the current proposal than is now the case in that regard. Accordingly, whilst there has been a material change in circumstances in the adoption of a new development plan, the new circumstances present a more favourable policy position by comparison with the circumstances in play when the Permission was granted.

16. At the time of the decision to grant the permission, the Current LP would have been emerging through the development plan process, and the National Planning Policy Framework (“NPPF”) as first adopted in 2012, would have been a material consideration in the decision making process, and in light of the age of the 2004 LP, both in general terms and the fact that it pre-dated the NPPF, it is clear that in the decision to grant the Permission significant weight would have been given to the NPPF policies, and the Permission determined as being in accordance with the NPPF 2012. The relevant policies in the NPPF have not altered: Para 145 (c) and (d) in NPPF 2019 are unchanged from their equivalents at Para 89, NPPF 2012; and Para 195 of NPPF 2019 is unchanged from Para 134 of NPPF 2012.
17. Accordingly, the only material change that has arisen since the grant of the Permission is the adoption of the Current LP; the Current LP policies are more favourable or at least neutral to the proposed development than the saved policies of the 2004 LP. There are no other material changes in circumstances, and as such there are no material changes that would justify a departure from the decision taken in the grant of the Permission. The Permission therefore stands as a significant material consideration, and the principle of consistency of decision making should be adhered to; in the absence of any material changes since the grant of the Permission, there are no justifiable reasons why permission should not be granted for the current proposal.

#### **Development Plan Policy and Planning Balance.**

18. Pursuant to s38(6) Planning and Compulsory Purchase Act 2004, determination under the Planning Acts must be made in accordance with the plan unless material considerations indicate otherwise.
19. The Bromsgrove District Plan 2011-2030, adopted January 2017 (BDP) sets out the relevant Development Plan policies pertinent to this scheme. The policies of the National Planning Policy Framework adopted February 2019 (NPPF) fall to be considered as material considerations. Further, as indicated above, the Permission, evidencing that a sun room of the same footprint design and similar scale as the proposed sun room, was acceptable in planning terms when granted, whether the Permission is deemed to have lapsed or otherwise, provides a significant material consideration in this case.

Green Belt.

20. **BDP4** relates to development in the Green Belt and in particular policy **BDP4.4** which provides that the development of new buildings in the Green Belt is considered to be inappropriate, except in specified circumstances, which include “d) *Proportionate extensions to non-residential buildings taking into account the potential impact on the openness and the purposes of including the land in Green Belt. Proposals that can demonstrate significant benefits to the local economy and/or community will be considered favourably*” and “e) *The replacement of a building provided the new building is in the same use and should not be materially larger than the building it replaces*”.
21. The key relevant NPPF policies as to Green Belt include para 143: “Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances” and para 145 which provides a series of exceptions to general presumption that new development in the Green Belt is inappropriate, which include “c) *the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building*” and “d) *the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces*”.
22. Whilst the Inspector in the Enforcement Appeal found the Sun Room to be inappropriate development, being a disproportionate addition, that assessment was made in relation to the Sun Room as currently constructed, which is of larger volume and increased height by comparison with the current scheme. In granting the Permission the Council plainly did not have concerns in this regard and the current scheme is of lesser volume and height than the scheme that they granted. In addition, the footprint of the permitted scheme is no greater than that of the pre-existing conservatory-style room which it replaced. Accordingly, it is submitted that such concerns do not arise in relation to the proposed scheme.
23. The Inspector found BDP Policy BDP4.4 of the BDP to be consistent with para 145 NPPF; it is notable however that, in contrast to the NPPF, BDP4.4, introduces the concept of ‘openness’ and the purposes of including land in the Green Belt.
24. The Enforcement Appeal Inspector assessed openness on the basis that it has both a visual and spatial dimension. The most recent assessment of Green Belt considerations, specifically the concept of ‘openness’ is that of the Supreme Court in R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) v North Yorkshire County Council [2020] UKSC 3, pursuant to which visual impact has the potential to be a relevant component in the assessment of impact on openness, and the extent to which it is to be considered depends on the facts of the case, and is a matter of planning judgment (it is not always an essential component).
25. The Enforcement Appeal Inspector pointed to the fact that the Sun Room as enforced against had a greater volume than the permitted scheme due to the roof design. If impact

on openness is to be considered, it bears repeating that the proposed scheme has a reduced impact on openness by comparison with the scheme authorised by the Permission; which in turn provided for the replacement of a previous conservatory-style extension which was of a similar scale and footprint to the permitted scheme, such that the replacement of that sun room with the proposed reduced height alternative does not therefore present any material impact on openness by comparison, and is in fact an enhancement; and therefore must be considered acceptable in that regard.

26. The proposal does not conflict with the purposes of including land in the Green Belt (and was not found by the Enforcement Appeal Inspector to so conflict).
27. BDP4.4 also notably provides that *Proposals that can demonstrate significant benefits to the local economy and/or community will be considered favourably*; the Sun Room extension has been used and enjoyed by customers thus ensuring that the restaurant business is able to continue to thrive. The facility offers an additional c.16 covers in a dining setting and c.20 seats in an informal setting, complementing the c.46 covers provided in the main restaurant area. The sun room is primarily used in an informal layout during the daytime to provide a more relaxed informal space enjoyed by walkers for coffee and light bites, and thus provides a contrasting but complementary offering to the more formal dining space in the main building (which, in contrast to the informal sun room space, has tables fully laid with cutlery and wine glasses etc.). For daytime trade, the sun room is the primary attraction, which draws in passing trade seeking relaxed refreshments, without which the Appellant would be at risk of having to close entirely for lunchtime service, and limit the restaurant to evening service.
28. The sun room is often booked for small events such as baby showers and birthdays and no comparative alternative offering could be provided in the event that the sun room were to be demolished.
29. The business employs 22 members of staff, four of whom are full-time (Restaurant Manager, Chef and two Sous-Chefs), the remainder of which are part-time. Most of the employees are local to the area, and the majority of the part-time staff are older teenagers that manage a shift or two a week whilst studying for A-levels and degrees etc.; the business offers them a safe environment in which to work, and it is often their first experience of employment, giving them valuable life skills and a solid work ethic. Without the sun room, there would be a significant reduction in the number of shifts that could be offered on this basis.
30. The sun room is a popular addition to the business, providing a distinct offering to the main restaurant and which provides a positive addition to the experience of local people and those from further afield which provides a specific draw to those visiting the area for its walking and other attractions, providing an important boost to the local economy and a focal point for the local community. The impact of the removal of the sun room on the business

and on the local community would be significant: potentially ending any daytime offering completely, and thus reducing the draw of Clent for visitors by removing a key element of the attraction that it provides to the local area; removing and reducing the number of jobs available to local people; and removing a key space used by local people for community events.

31. If the submission that the proposal does not comprise 'inappropriate development' pursuant to BDP4.4 and NPPF 145 is not accepted, it is submitted that the following are considerations which amount to very special circumstances:
- i. the longstanding presence of an extension to the front of the Property of a similar scale and footprint;
  - ii. the grant of the Permission for a replacement of such in 2016;
  - iii. the proposed scheme represents development of lesser height and volume by comparison to the permitted scheme such that the harms or the current proposal are minimal; and
  - iv. the economic benefits that the sun room generates for the business, the local community and local economy: representing a significant proportion of the Appellant's business at the Property; enabling a daytime offering; acting as a draw for tourists; providing a focal point for local events; and generating local employment opportunities.

#### Heritage Impact.

32. The Property is not listed but is located on the edge of the Clent Conservation Area.
33. Listed Buildings and Conservation Areas are designated heritage assets for planning policy purposes and are afforded special protection in planning decisions. There are two strands to their protection:
- i. The duty imposed by s72 Planning (Listed Buildings and Conservation Areas) Act 1990 which states that '*special attention should be paid to the desirability of preserving or enhancing the character or appearance of the area*; and
  - ii. The NPPF, which requires Local Authorities to '*conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations*' (para 184). NPPF Para 193 states that '*When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.*' Para 196 provides that '*Where a development proposal will lead to less than substantial harm to the significance of*

*the heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimal viable use’.*

34. **BDP20** relates to Managing the historic environment. The most relevant provisions being:
- i. BDP20.3 *“Development affecting Heritage Assets, including alterations or additions as well as development within the setting of Heritage Assets, should not have a detrimental impact on the character, appearance or significance of the Heritage Asset or Heritage Assets.”;*
  - ii. BDP20.4 *“Applications to alter, extend, or change the use of Heritage Assets will be required to provide sufficient information to demonstrate how the proposals would contribute to the asset’s conservation whilst preserving or enhancing its significance and setting.”;* and
  - iii. BDP20.6 *“Any proposal which will result in substantial harm or loss of a designated Heritage Asset will be resisted unless a clear and convincing justification or a substantial public benefit can be identified in accordance with current legislation and national policy.”*
35. NPPF para 187 imposes an obligation on Local Authorities to maintain or have access to a historic environment record which should contain up-to-date evidence about the historic environment in their area and be used to assess the significance of heritage assets and the contribution they make to their environment. NPPF Para 189 requires applicants for planning permission to describe the significance of any heritage assets affected, including any contribution made by their setting, but makes clear that the level of detail required should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance. NPPF Para 192 requires local authorities in determining applications to take account of the desirability of sustaining and enhancing the significance of the heritage asset and putting them to viable uses consistent with their conservation; the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and the desirability of new development making a positive contribution on local character and distinctiveness.
36. The heritage asset in this case is the Clent Conservation Area, in relation to which there is only a brief appraisal available. The Inspector in the Enforcement Appeal found the significance of the Conservation Area to be largely derived from its pattern of brick-built cottages, few of which had extensions to the front, maintaining a sense of simplicity which gives insight into the historical composition of the built environment. However, the Conservation Area Appraisal simply refers to the hilly nature of the parish; its historic importance as a battleground between Ancient Britons and invading Saxons; the presence of a number of listed buildings of special architectural or historic interest in the settlement; its status as an important resting place for pilgrims; the significance of iron-making in the

settlement and the visual cues which remain in evidence of that activity; and the general arrangement of the settlement, being strung out at the foot of the Clent Hills, giving it its distinct character within its rural setting which it is desirable to preserve.

37. The Property is but one small feature on the edge of the Conservation Area, and as a business, provides facilities for tourists attracted to the local area.
38. The proposed scheme uses modern glazing, which differentiates the new from the old structure, thus allowing the history of the building to be read and understood; and the glazed nature allows the form and fabric of the original building to be seen and enjoyed. The removal of the sloped roof will have a positive impact on the visual impression: the alleged dominance of the Sun Room observed by the Inspector in the Enforcement Appeal will be removed; the height of the roof of the proposed sun room will align with the eaves height of the front entrance porch, and will be lower than the front extension on the other side of the porch, it will also sit well below the base of the upper floor windows, such that overall it will appear subservient to the original building, and will no longer visually interfere with the view of upper floor windows. The proposed scheme is an enhancement by comparison with both the existing Sun Room and the previous conservatory-style extension that it replaced; it is also an enhancement by comparison with the permitted scheme, being of lesser height and volume.
39. The features of the Conservation Area identified in the Conservation Area Appraisal will be unaffected by the proposed scheme; the original building and its contribution to the Conservation Area will be preserved; the proposal will allow for the continuation of the restaurant use, in a way which enhances the visual impression not only in contrast to the existing Sun Room, but also in contrast to the permitted scheme, and in stark contrast to the original sun room, whilst retaining the ability to read the building's history. Thus the significance of the heritage asset as identified by the Enforcement Appeal Inspector is preserved and, by comparison with the permitted scheme, is enhanced.
40. Applying the statutory test to this proposal therefore, it is clear that it is met. The character and appearance of the area is preserved and enhanced through the use of high quality materials, and a design and specification which represents a contemporary design appropriate to its function which the Council have in essence approved. The Conservation Area will not be affected such that it shall be preserved for future generations.
41. In considering the NPPF tests, whilst the heritage asset itself (the Conservation Area) clearly has significance, and great weight is to be given to the asset's conservation (NPPF 193), it is submitted that the proposed scheme will not give rise to harm. Rather it will assist in that conservation and will sustain and enhance that significance (pursuant to NPPF 192(a)) by providing a local attraction facilitating the future enjoyment of the Conservation Area and making a positive contribution to the conservation of the Area and the sustainability of the local community (pursuant to NPPF 192(b)), including helping to ensure

the future economic vitality of the local area. Further, it is considered that the scheme satisfies the desirability (NPPF 192(c)) for new development to make a positive contribution to local character and distinctiveness. There are clear public benefits arising from the proposals, not only in the economic and social sense as detailed above, also but the improved thermal efficiency of the new windows and door which give rise to an environmental benefit in supporting the move to a low carbon future and helping to combat climate change (fulfilling the environmental role of sustainable development). In addition, allowing such high quality replacements will provide longevity, thus protecting the appearance of the Property for the future, in particular by comparison with the alternative arising as a consequence of the Enforcement Notice, being a gaping hole in the frontage of the Property.

#### Design.

42. **BDP19** relates to High Quality Design, and deals with practical matters; the design of the Sun Room was approved by the Council pursuant to the Permission, and the proposed scheme remains consistent with that design; accordingly, it is not considered that the proposed scheme presents any conflict with this policy.
43. The NPPF expresses a general requirement for supporting a prosperous rural economy and in particular those policies supporting and promoting sustainable rural tourism are relevant to this appeal (NPPF para 83).
44. The Permission plainly represents a scheme which the Council considered to be appropriate, taking into account its location in the Green Belt and the Clent Conservation Area. The existing Sun Room clearly provides a significant benefit to the local economy, allowing the Four Stones restaurant to accommodate additional local custom and to attract visitors and tourists to the locality. The principle, design and materials have been approved, as has the footprint. The height and volume (being the key concerns arising in connection with the scheme assessed in the s78 Appeal and the Enforcement Appeal) are reduced by comparison with those schemes and with the scheme authorised by the Permission and must therefore be considered acceptable.

#### **Summary.**

45. The proposal must be assessed in the context of the planning history of the site, which includes the pre-existing sun room, the Permission for its replacement, and the Inspector's comments as to the merits of this proposal (Option B) and the need for collaboration between the parties as to reaching agreement as to an alternative to the retention of the Sun Room in its current form, and an alternative to the inevitable outcome of compliance with the Enforcement Notice, being a gaping hole in the frontage of the building. Those elements are material considerations and should be given significant weight in the planning

balance. It is clear that a structure in this location of similar footprint height and volume as that now proposed, has existed on the site since the 1970s; its replacement pursuant to the Permission was considered acceptable in planning terms by the Council in 2016.

46. Given that the proposed scheme is consistent with the approved scheme in its design and footprint, and is slightly reduced in height and volume by comparison, this *replacement* front extension, represents an improvement on the original sun room, and an improvement on the permitted scheme; it sits within the exceptions to inappropriate development in the Green Belt (or in the alternative, the materials considerations detailed above represent very special circumstances outweighing the negligible harm arising to the Green Belt); and represents the preservation and enhancement of the Conservation Area.

**Dated 6 April 2020**

**Suzanne Tucker  
FBC Manby Bowdler LLP**

## APPENDIX 1

### Pre-existing conservatory-style structure



## APPENDIX 2

### Policy Extracts

(... \* irrelevant sections omitted)

Bromsgrove District Local Plan January 2004 (saved policies)	Bromsgrove District Plan 2011-2030	Comment and Overall Assessment of change –
<p><b>DS2 Green Belt Development Criteria:</b></p> <p>Permission for development in the Green Belt will not be given, except in very special circumstances, for the construction of new buildings or for the change of use of existing buildings unless one of the following instances applies:</p> <p>...*</p> <p>Proposals for development should be environmentally and ecologically acceptable and should not damage the visual amenities of the Green Belt.</p>	<p><b>BDP4 - Green Belt:</b></p> <p>...*</p> <p><b>BDP4.4</b> The development of new buildings in the Green Belt is considered to be inappropriate, except in the following circumstances:</p> <p>...*</p> <p>d) <b>Proportionate extensions to non-residential buildings taking into account the potential impact on the openness and the purposes of including the land in Green Belt. Proposals that can demonstrate significant benefits to the local economy and/or community will be considered favourably;</b></p> <p>e) <b>The replacement of a building provided the new building is in the same use and should not be materially larger than the building it replaces;</b></p> <p>...*</p> <p>g) Limited infilling or the partial or complete redevelopment of previously developed sites that would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.</p>	<p>Current LP position by comparison with the previous policy position giving rise to the grant of the Permission</p> <p>Saved 2004 LP policy DS2 did not include an equivalent exception to the generality of the Green Belt policy to that at BDP4.4(d) for proportionate extensions to non-residential buildings to be considered exceptions to the generality of inappropriate development as is now provided for in BDP4.4 of the Current LP; the policy at the time the Permission was granted was therefore less favourable to the current proposal than is now the case in that regard</p> <p><b>Positive.</b></p>
<p><b>DS13 Sustainable Development</b></p> <p>The District Council will take full account of the need for future development to be sustainable so that present demands do not compromise the ability of future generations to meet their own demands or enjoy a high quality environment. All development must reflect the need to <b>safeguard and improve the quality of life of residents by:</b></p> <ul style="list-style-type: none"> <li>• maintaining <b>high and stable</b></li> </ul>	<p><b>BDP1 Sustainable Development principles</b></p> <p><b>BDP1.1</b> When considering development proposals, the Council will take a positive approach that reflects the <b>presumption in favour of sustainable development</b> contained in the National Planning Policy Framework. It will always work proactively with applicants jointly to find solutions which mean that proposals can be</p>	<p>Current LP now aligns with NPPF</p> <p><b>Neutral</b></p>

<p><b>levels of economic growth and employment</b></p> <ul style="list-style-type: none"> <li>• ensuring social progress which recognises the needs of everyone</li> <li>• <b>conserving energy resources</b>, and</li> <li>• protecting the Plan area's <b>essential character</b> and environmental assets, including: <ul style="list-style-type: none"> <li>a) <b>the general attractiveness and diversity of the landscape</b></li> <li>b) the open and undeveloped nature of the countryside</li> <li>c) <b>the Green Belt</b></li> <li>d) areas of wildlife and ecological value</li> <li>e) <b>the setting, form and character of settlements</b></li> <li>f) the quality of air and water resources</li> <li>g) buildings and areas of special townscape, historic and architectural interest</li> <li>h) sites of archaeological importance</li> <li>i) land of recreation and amenity value, and</li> <li>j) the best and most versatile agricultural land.</li> </ul> </li> </ul>	<p>approved wherever possible, and to secure <b>development that improves the economic, social and environmental conditions in the area.</b></p> <p><b>BDP1.2 Planning applications that accord with the policies in this District Plan</b> and where relevant, with policies in neighbourhood plans <b>will be approved without delay, unless material considerations indicate otherwise.</b></p> <p><b>BDP1.3</b> Where there are no policies relevant to the application or relevant policies are out of date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise - taking into account whether:</p> <ul style="list-style-type: none"> <li>a) Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; or</li> <li>b) Specific policies in that Framework indicate that development should be restricted as stated in footnote 9 of paragraph 14 of the NPPF. For example, those policies relating to sites designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, designated Heritage Assets and locations at risk of flooding.</li> </ul> <p><b>BDP1.4</b> In considering all proposals for development in Bromsgrove District regard will be had to the following:</p> <ul style="list-style-type: none"> <li>a) Accessibility to public transport options and the ability of the local and strategic road networks to accommodate additional traffic;</li> <li>b) Any implications for air quality in the District and proposed mitigation measures;</li> <li>c) The cumulative impacts on infrastructure provision;</li> <li>d) The quality of the natural environment including any potential impact on biodiversity, water quality, geodiversity, landscape and the provision of/and links to green infrastructure</li> </ul>	
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	<p>(GI) networks7;</p> <p>e) Compatibility with adjoining uses and the impact on residential amenity;</p> <p>f) <b>The impact on visual amenity;</b></p> <p>g) The causes and impacts of climate change i.e. the energy, waste and water hierarchies, flood risk and future proofing;</p> <p>h) The provision of communication technology infrastructure to allow for future technological enhancements e.g. fibre optic ducting;</p> <p>i) <b>The impact on the historic environment and the significance of Heritage Assets and their setting;</b></p> <p>j) Financial viability and the <b>economic benefits for the District</b>, such as new homes and <b>jobs</b>.</p>	
<p><b>S35A Development in Conservation Areas</b></p> <p>The District Council will seek to <b>preserve or enhance the character or appearance of Conservation Areas</b> and will:</p> <p>a) undertake measures as appropriate to promote and improve the environmental quality of such areas;</p> <p>b) require new development, in or adjacent to such areas, to be <b>sympathetic to the character of buildings in the detailed treatment of matters of design including the form, scale and materials;</b></p> <p>c) normally require detailed applications or exceptionally where an outline application is submitted the inclusion of sketch designs including elevational drawings showing the relationship with adjacent properties;</p> <p>d) seek to retain and enhance open spaces, important views, trees or other features of importance to the street scene.</p>	<p><b>BDP20 - Managing the Historic Environment</b></p> <p><b>BDP20.1</b> The District Council advocates a holistic approach to the proactive management of the historic environment which encompasses all Heritage Assets recognised as being of significance for their historic, archaeological, architectural or artistic interest.</p> <p><b>BDP20.2</b> The District Council will support development proposals which <b>sustain and enhance the significance</b> of Heritage Assets including their setting. This includes:</p> <p>a. Designated Heritage Assets, including Listed Buildings, <b>Conservation Areas</b>, Scheduled Ancient Monuments, Registered Parks and Gardens;</p> <p>b. Non-designated Heritage Assets including (but not limited to) those identified on the Local List and assets recorded in the Historic Environment Record;</p> <p>c. The historic landscape of the District, including locally distinctive settlement patterns, field systems, woodlands and historic farmsteads;</p> <p>...*</p>	<p>The requirement to preserve and enhance character and appearance remains the key principal ; and the Current LP reflects the NPPF</p> <p><b>Neutral</b></p>
<p><b>S36 Design of Development in Conservation Areas</b></p> <p>Where development is proposed in or adjacent to a Conservation Area the District Council will normally require sketch designs to be submitted with outline planning</p>	<p><b>BDP20.3</b> Development affecting Heritage Assets, including</p>	

<p>applications, including elevational drawings, showing the relationship with adjacent properties. A high standard of design will be expected which demonstrates that the relevant aspects of the built form have been taken fully into consideration and that proposals are compatible with the character of the area.</p>	<p>alterations or additions as well as development within the setting of Heritage Assets, <b>should not have a detrimental impact on the character, appearance or significance of the Heritage Asset</b> or Heritage Assets.</p> <p><b>BDP20.4</b> Applications to alter, extend, or change the use of Heritage Assets will be required to provide sufficient information to demonstrate how the proposals would contribute to the asset's conservation whilst preserving or enhancing its significance and setting.</p> <p><b>BDP20.5</b> In considering applications regard will be paid to the desirability of securing the retention, restoration, maintenance and continued use of Heritage Assets, for example, the District Council will support the sensitive reuse of redundant historic buildings, and will encourage proposals which provide for a sustainable future for Heritage Assets, particularly those at risk.</p> <p><b>BDP20.6</b> Any proposal which will result in substantial harm or loss of a designated Heritage Asset will be resisted unless a clear and convincing justification or a substantial public benefit can be identified in accordance with current legislation and national policy.</p> <p>...*</p> <p><b>BDP20.8</b> Where a detailed Conservation Area Appraisal Management Plan has been adopted, it will be a material consideration in determining applications for development within that Conservation Area.</p> <p><b>BDP20.9 Development within or adjacent to a Conservation Area should preserve or enhance the character or appearance of the area.</b></p> <p>...*</p> <p><b>BDP20.14</b> In considering applications that directly or indirectly affect Heritage Assets, a <b>balanced judgement will be applied having regard to the scale of any harm or loss</b> as a result of proposed development and the significance of the</p>	
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	<p>Heritage Asset. ...*</p> <p><b>BDP20.16</b> The District Council will promote a <b>positive interaction between historic sites and places and high quality modern developments which allows for evolution and positive change whilst preserving and respecting the significance and setting of existing Heritage Assets.</b></p> <p><b>BDP20.17</b> Applications likely to affect the significance of known or potential Heritage Assets or their setting should demonstrate an understanding of their significance in sufficient detail to assess the potential impacts. This should be informed by available evidence and, where appropriate, further information to establish significance of known or potential Heritage Assets. ...*</p> <p><b>BDP20.20</b> The District Council will <b>embrace opportunities to mitigate the effects of climate change</b> by seeking the reuse of historic buildings and where appropriate their modification to reduce carbon emissions and secure sustainable development without harming the significance of the heritage asset or its setting.</p>	
<p><b>C4 Criteria for Assessing Development Proposals</b></p> <p>Development will not be permitted where it would have a materially detrimental effect on the <b>landscape</b>, in particular within Landscape Protection Areas. When assessing the effect on the landscape, special attention will be given to the following:</p> <p>a) prominent slopes or major ridge lines;</p> <p>b) woodland and hedgerows including ancient areas of the same;</p> <p>c) water features where these are an important component in the landscape.</p>	<p><b>BDP21 Natural Environment</b></p> <p>BDP 21.1 The Council will seek to achieve better management of Bromsgrove’s natural environment by expecting developments to:</p> <p>...*</p> <p>g) <b>Protect and enhance</b> the distinctive <b>landscape character</b> of Bromsgrove, as identified in the Worcestershire Landscape Character Assessment, and take account of the Worcestershire Landscape Character Assessment Supplementary Guidance; ...*</p>	<p>The requirement to protect and enhance goes further than the previous requirement not to have a materially detrimental effect.</p> <p>The Landscape Character Assessment SPG was in place prior to the grant of the Permission and has not been updated</p> <p><b>Neutral</b></p>
<p><b>TR11 Access and Off-Street Parking</b></p> <p>The District Council will require that all development incorporates safe</p>	<p><b>BDP16 Sustainable Transport</b></p> <p>...*</p> <p><b>BDP16.8</b> The Council will encourage the use of travel plans</p>	<p>The development in this case will not generate significant amounts of travel warranting a travel plan</p> <p><b>Neutral</b></p>

<p>means of access and egress appropriate to the nature of the local highway network and includes sufficient off-street parking in accordance with the guidelines in Appendix 17.</p>	<p>where applicable to secure the provision of sustainable travel choices, both to new developments and to extensions of existing sites, regardless of use.</p> <p><b>BDP16.9</b> Developments which generate significant travel demands must include a transport statement or transport assessment, being fully informed by guidance, and have easy access to existing or proposed public transport links.</p>	
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**Re: APPLICATION FOR PLANNING PERMISSION FOR A SUN ROOM  
THE FOUR STONES RESTAURANT, CLENT,  
STOURBRIDGE DY9 9PS**

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**OPINION**

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**Introduction and background**

1. The Applicants seek permission for a sun room to the front of the Applicants' restaurant known as Four Stones, Clent, Stourbridge, DY9 9PS ("the Property"). I have seen the supporting submission drafted by the Applicants' Solicitor and agree with its contents. I am instructed to comment on the legal proceedings in respect of the Enforcement Appeal, which are presently underway in the High Court.
2. The background to this matter is that the unauthorised sun room that is presently in situ was completed following the grant of planning permission by the Council for the demolition of an existing sun room, and replacement with a new flat roof sun room ("the permission"). In due course, a sun room was erected, but it differed in some respects to that which had been permitted. In particular, the roof was sloping and higher, and extended into an overhanging canopy. The canopy has now been removed. The Council enforced against the unauthorised structure, and has sought demolition of it.
3. Demolition of the structure would leave an unsightly hole in the side of the restaurant that would require boarding up for security purposes. That is plainly undesirable in the context of the Conservation Area. Moreover, it would compromise the ability of the Applicants to attract customers, and continue their

business as they have done until now. It is in the interests of all parties that an appropriate solution is found in the very near future.

4. As part of the appeal, the Applicants proposed four alternative schemes to the entire demolition of the sun room. Those options included Options B and C which were a reversion to the Permission or similar. However in respect of Options B and C, the Inspector considered that because those Alternative Developments included the formation of a new roof it was not open to him to grant planning permission. It is the Applicants case that the Inspector was wrong to so conclude.
5. In respect of the fourth Alternative Development proposal, Option D involved making good the frontage of the restaurant that would be left open and exposed by the removal of the unauthorised sun room. Again, the Inspector considered that it was outwith his powers to grant permission for the proposals. Again, it is the Applicants' case that the Inspector erred in his conclusion.
6. It is pertinent to note that the Inspector in his appeal decision extended the time period for compliance in recognition that the Council evidently considers that some form of extension to the restaurant on the footprint of the permission approved in 2016 is acceptable:

*“Nonetheless, it is clear by the grant of planning permission in 2016 that the Council considers some form of extension on this footprint is acceptable in terms of its impact on the Green Belt and the character and appearance of the area.”*

[1]  
[SEP]

7. The purpose of extending the time for compliance was to allow an opportunity for the applicants and the Council to explore alternatives to the unauthorised structure that would overcome the Council's objections; see DL51. That is exactly what the Applicants are doing through this process; it is incumbent upon the Council to be equally collaborative.

### **The Proceedings before the High Court**

8. Following dismissal of the Applicants' appeal against the enforcement notice, the Applicants appealed to the High Court in November 2019. The Secretary of State for Housing, Communities and Local Government defended the application for permission, which was heard before HHJ Cooke sitting as High Court Judge, on 13 December 2019.
9. Permission was granted following the hearing. The Judge considered that all three grounds are arguable, and also proceeded to provide unusually robust observations on the appeal given the length of discussion that took place at the hearing.
10. The grounds are as follows:

**Ground 1:** The Inspector misinterpreted and failed to properly apply section 177(1) of the 1990 Act, and / or failed to give adequate reasons for rejecting the Alternative Development proposals.

**Ground 2:** The Inspector misinterpreted sections 173(4)(a) and 176(1)(b) of the 1990 Act, failed to properly assess the obvious Alternative Developments and / or failed to give adequate reasons for rejecting the Alternative Development proposals in relation to the ground f appeal.

**Ground 3:** The Inspector failed to consider and/or exercise his powers in relation to section 176(1) of the 1990 Act, and/or failed to have regard to the consequences of the existing requirements of the EN. Additionally, the Inspector failed to provide adequate reasons in that respect. The approach was irrational.

11. Specifically, the Applicants accept that the Inspector was alive to the need to consider "obvious alternatives" in line with well-established case law, but say that his reasons for rejecting the Alternative Development proposals demonstrate a misunderstanding of section 177(1) and/ or are inadequate. In particular:

- a. The alleged breach of planning control within the EN is the erection of a

replacement glazed sun room without planning permission.

- b. Both Alternative Developments B and C proposed a glazed sun room. The nature and function of the sun room would remain the same.
- c. The Alternative Development proposals would reduce the size of the unauthorised development through minor modifications to the roof. The resulting structures would still be wholly contained within the footprint and volume of the sun room as built and enforced against.
- d. Both proposals can therefore properly be regarded as a “part” of the development as built.
- e. The Inspector failed to explain why “*new works in the formation of a roof*” precluded the alternative developments B and C from falling within section 177(a) of the Act in principle.
- f. That narrow approach is contrary to the **Ahmed** case<sup>1</sup> and finds no support within the wording of the Act. In **Ahmed** partial demolition of the building and remodelling was inevitably required to reduce the four storey flat roof building in that instance to the previously consented three storey butterfly roof building (see para. 17). The Court rejected the argument that such modifications precluded an Alternative Development from falling within the scope of section 177(1) if the alternative was such that a development in accordance with the original scheme could be regarded as a “part” of the development as built; see paragraphs 19(4) and 27.

12. HHJ Cooke in granting permission for the appeal to proceed considered that if additional works were sufficient to take Alternative Development proposals outside of the scope of section 177, then the Court of Appeal in **Ahmed** would not have needed to refer the matter in that case back to the Inspectorate for redetermination. That Alternative Development in that case clearly required new works, and a new roof to bring the structure back in line with the original permission.

13. In respect of the second ground of appeal, the Applicants’ case before the High

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<sup>1</sup> *Mahfooz Ahmed v The Secretary of State for Communities and Local Government, London Borough of Hackney* [2014] EWCA Civ 566

Court is that the Inspector appears to have rejected the Alternative Development proposals simply because they were promoting solutions that were less than full demolition. However, an Inspector has wide powers to decide whether there is any solution, short of a complete remedy of the breach, which is acceptable in planning terms and amenity terms. If there is, an Inspector should be prepared to modify the requirements of the notice and grant permission subject to conditions. The Inspector in this instance failed to apply his mind to that task.

14. Finally, in relation to ground 3, it is said that section 173(3)-(4) require than an EN must specify the steps to be taken to remedy the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place. By section 173(5), the EN can include a number of requirements including (a) the alteration or removal of any buildings or works; (b) the carrying out of any building or other operations.
15. In the appeal decision, the Inspector considered that the purpose of the requirement to remove the unauthorised development was for the purpose of remedying the breach by restoring the land to its condition before the breach took place. However the requirements go beyond that and are excessive. Prior to the breach, there was an existing sun room which was demolished following the 2016 permission. The front façade of the Four Stones Restaurant was therefore enclosed prior to the breach.
16. In this case therefore, the requirements of the EN would fail to restore the land to its previous condition. Compliance with the EN would mean that a large hole was left in the front façade of the Four Stones Restaurant, with no lawful means of closing it up save for temporary boarding perhaps. The consequences for the structural safety and protection of the building, the running of the Claimants' business, and the safety of its occupants are potentially catastrophic. The failure to consider and understand the effect of the unvaried requirements represents a failure to have regard to a material consideration, and is irrational. It is a very serious failure by the decision maker in this case.

17. The Claimants sought to address that consequence by offering Alternative Development Option D, which could have been secured by the Inspector exercising his wide discretion pursuant to section 176, having regard to section 173(5). Alternatively, the Inspector could have imposed a requirement to simply restore the land to its condition prior to the breach, to carry out building work to secure the façade of the restaurant, or to construct a new structure pursuant to section 173(6).
18. No explanation was given as to why the Inspector failed to exercise his power to vary the notice in light of the serious consequences for the Claimants', their business and their property. It is also highly likely that such an outcome would be detrimental to the character and appearance of the Conservation Area, which is an outcome that decision-takers should seek to avoid if possible.
19. In granting permission, HHJ Cook explained that he was satisfied that it is arguable that it was open to the Inspector to make the variation to achieve one of those effects pursuant to section 173(5). The Judge explained that there is an obvious difficulty in an EN that leaves a building unsecure, and it is arguable that the Inspector was wrong not to consider the variation that would deal with the issue satisfactorily. In short, the Inspector was wrong to not provide at least one solution such that the Applicants would not be left in the position of having an unsecure building.

### **Next Steps and Conclusions**

20. The substantive hearing is scheduled for the start of May. In the meantime, the client is seeking a collaborative solution with the Council by pursuing an application for planning permission of a scheme that could be regarded as more advantageous than that which was permitted in 2016. That approach accords with the spirit of paragraph 51 of the Decision Letter in which, (as set out above), the Inspector increased the time period for compliance to 9 months so that the parties could explore alternatives which would overcome the Council's objections. In

those circumstances, it is hoped that the Council will reflect the collaborative approach taken by the Applicants, and arrive at a collaborative solution that is in the interest of all parties.

**THEA OSMUND-SMITH**

**No5 Chambers**

**25 February 2020**

**Re: APPLICATION FOR PLANNING  
PERMISSION FOR A SUN ROOM AT  
THE FOUR STONES RESTAURANT,  
CLENT, STOURBRIDGE DY9 9PS**

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**OPINION**

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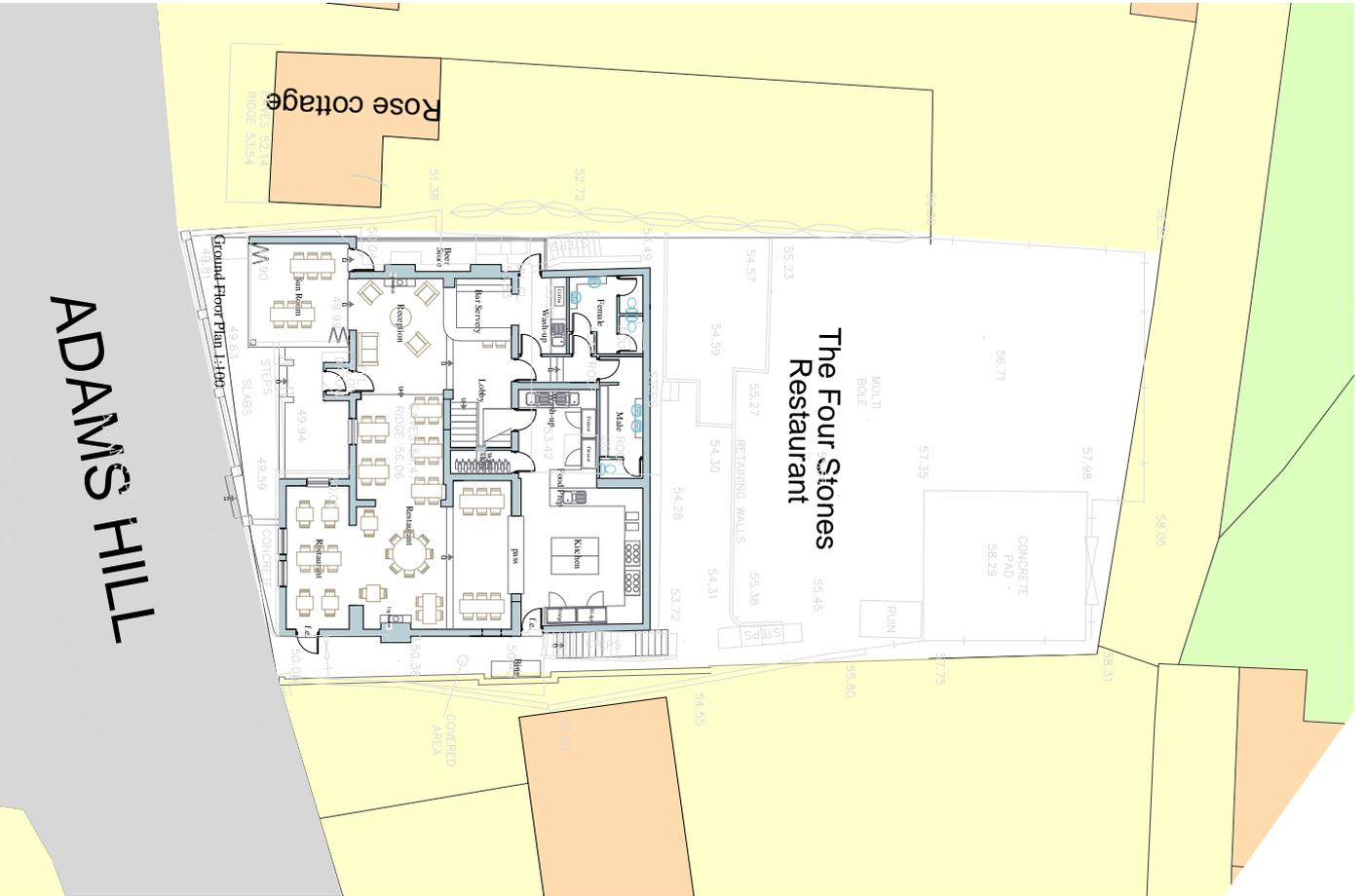
**Suzanne Tucker**  
**Associate**  
**FBC Manby Bowdler LLP**  
Routh House  
Hall Park Way  
Telford  
TF3 4NJ

Ref: BHA85/8

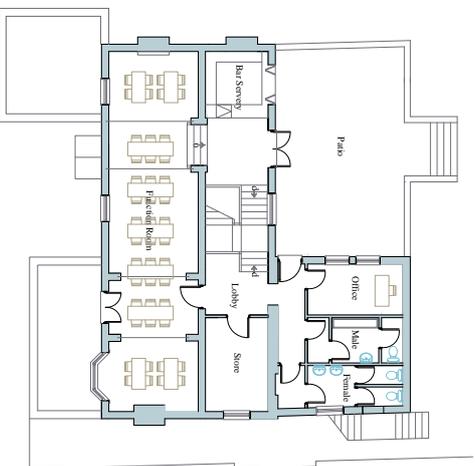
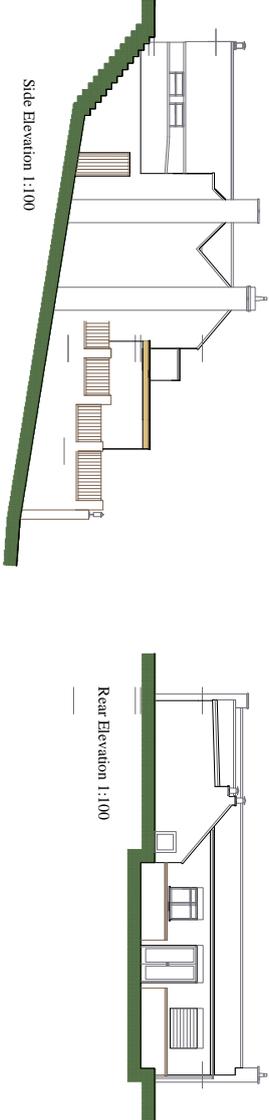
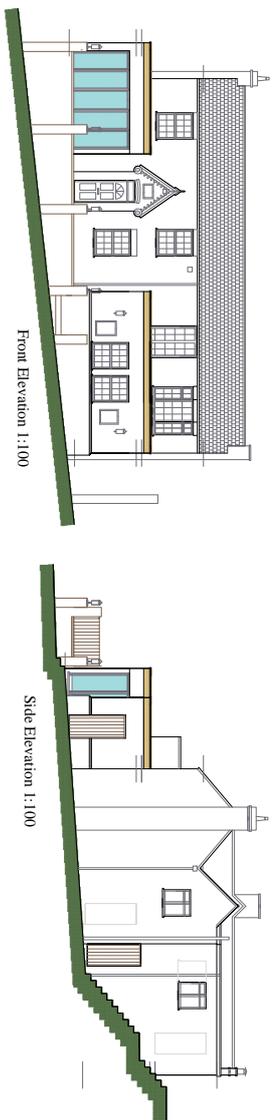
**Thea Osmund-Smith**



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ADAMS HILL



O.S. Plan 1:1250

First Floor Plan 1:100

<small>© 2016/2018 - Planning permission</small>	
<b>TITLE</b>	Proposed Floor Plans The Four Stones Restaurant Adams Hill Clemt DY9 9PS
<b>NO. / DATE</b>	FS/11 March 2016
<b>SCALE</b>	1:100
<b>NCR ARCHITECTURAL DESIGN TOWN PLANNING</b> 9 Windsor Road Harrogate West Yorkshire HG1 2JH UK Mob: 07796 805316 <a href="mailto:nelind@ncrdesign.co.uk">nelind@ncrdesign.co.uk</a>	



## **BROMSGROVE DISTRICT COUNCIL**

### **MEETING OF THE PLANNING COMMITTEE**

MONDAY 5TH JULY 2021  
AT 6.00 P.M.

PARKSIDE SUITE, PARKSIDE, MARKET STREET, BROMSGROVE  
WORCESTERSHIRE, B61 8DA

MEMBERS: Councillors A. J. B. Beaumont, G. N. Denaro, S. P. Douglas,  
A. B. L. English, S. G. Hession, H. J. Jones, J. E. King,  
P. M. McDonald, M. A. Sherrey, P.L. Thomas and P. J. Whittaker

### **AGENDA**

1. Election of Chairman for the Ensuing Municipal Year
2. Election of Vice-Chairman for the Ensuing Municipal Year
3. To receive apologies for absence and notification of substitutes
4. Declarations of Interest  
  
To invite Councillors to declare any Disclosable Pecuniary Interests or Other Disclosable Interests they may have in items on the agenda, and to confirm the nature of those interests.
5. To confirm the accuracy of the minutes of the meeting of the Planning Committee held on 16th March, 22nd March, 12th April and 27th April 2021 (Pages 1 - 34)
6. Updates to planning applications reported at the meeting (to be circulated prior to the start of the meeting)
7. Tree Preservation Order (2) 2021 - Trees on Land at 1A College Road, Bromsgrove, B60 2NE (Pages 35 - 90)

8. 20/00643/FUL - Full Planning Permission for the use of land for the stationing of 90 static residential park homes for the over 55s, with associated parking, internal service roads, and landscaping and acoustic fence to the north, east and west boundaries - Corbett Business Park, Shaw Lane, Stoke Prior, Bromsgrove, Worcestershire, B60 4EA - Mongoose Limited (Pages 91 - 154)
9. 20/01502/FUL - Internal works to facilitate a new mezzanine level in the storage and distribution building, approved under the reserved matter, consent 19/00619/REM - Redditch Gateway, Land Adjacent To The A4023, Coventry Highway, Redditch, Worcestershire - Momentum Projects Limited (Pages 155 - 170)
10. 21/00090/FUL - Proposed extensions to dwelling - 29 Newfield Road, Hagley, Stourbridge, Worcestershire, DY9 0JR - Mr. C. Rees-Cooke (Pages 171 - 196)
11. 21/00312/FUL - Proposed detached dwelling house using, previously approved access driveway - 32 Lickey Square, Lickey, Birmingham, Worcestershire, B45 8HB - Mr. P. Norton (Pages 197 - 224)
12. 21/00204/FUL - Redevelopment of builder's yard site to provide 2 no. semi-detached dwellings and associated vehicular access and landscaping - Land To The Rear Of Redhill Place, Hunnington, B62 0JR - Mr. C. Myatt (Pages 225 - 250)
13. 20/00443/FUL - Glazed sun room (part retrospective) - remove sloped roof and replace with flat aluminium-framed glazed roof, retaining the remaining structure as existing - Four Stones Restaurant, Adams Hill, Clent, Stourbridge, Worcestershire DY9 9PS - Messrs AS, BS and BS Bhandal (Pages 251 - 264)
14. To consider any other business, details of which have been notified to the Head of Legal, Equalities and Democratic Services prior to the commencement of the meeting and which the Chairman considers to be of so urgent a nature that it cannot wait until the next meeting.

K. DICKS  
Chief Executive

Parkside  
Market Street  
BROMSGROVE  
Worcestershire  
B61 8DA

25th June 2021

Name of Applicant	Proposal	Expiry Date	Plan Ref.
Messrs AS, BS and BS Bhandal	<p>Glazed sun room (part retrospective): remove sloped roof and replace with flat aluminium-framed glazed roof, retaining the remaining structure as existing</p> <p style="text-align: center;">Four Stones Restaurant, Adams Hill, Clent, Stourbridge, Worcestershire DY9 9PS</p>	08.06.2020	20/00443/FUL

**RECOMMENDATION:**

- (a) **MINDED to GRANT** full planning permission:
- (b) That **DELEGATED POWERS** be granted to the Head of Planning, Regeneration and Leisure to determine the application following the receipt of a suitable and satisfactory legal mechanism in relation to the following matters:-
  - (i) To undertake and complete the works within 6 calendar months from the date of the grant of planning permission 20/00443/FUL.
  - (ii) Planning Obligation Monitoring Fee: £TBC.
- (c) And that **DELEGATED POWERS** be granted to the Head of Planning and Regeneration to agree the final scope and detailed wording and numbering of conditions as set out in the list at the end of this report.

**Consultations**

**Clent Parish Council**

No comments submitted.

**Conservation Officer**

Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of conservation areas. Policies in BDP20, the Historic Environment Section of the Bromsgrove District Plan require that development proposals which sustain and enhance the significance of heritage assets including their setting and should not have a detrimental impact on the character, appearance or significance of heritage assets. These policies are supported by those in the NPPF.

This latest proposal is for a marginally more modest conservatory than that granted permission in 2016 and sits more or less on the same footprint of the earlier structure. It is considered that the proposal will have a neutral impact on the character and appearance of the Clent Conservation Area and would not harm the significance of the Area.

**WRS - Noise**

No objection.

## Public Consultation

Site Notice erected 11.5.20 expired 13.6.20  
 Press Notice published 22.5.20 expired 8.6.20

2 letters of comment

1 objection letter makes reference to the hours of opening of the restaurant and noise experienced as a result.

1 representation refers the unauthorised works that have taken place on site and that the applicant should have built the structure in accordance with the approved plans.

## Relevant Policies

### **Bromsgrove District Plan**

BDP1 Sustainable Development Principles  
 BDP4 Green Belt  
 BDP19 High Quality Design  
 BDP20 Managing the Historic Environment

### **Others**

Bromsgrove High Quality Design SPD  
 NPPF National Planning Policy Framework (2019)  
 NPPG National Planning Practice Guidance

## Relevant Planning History

17/00646/FUL	Demolition of existing sunroom and erection of a replacement glazed sunroom (retrospective)	Refused	19.07.2017
APP/P1805/W/3191833		Dismissed at Appeal	09.04.2018
		Overtaken in High Court	15.10.20
16/0403	Demolition of front sun room and replace with new flat roof sun room.	Approved	06.07.2016
B/1994/0680	Erection of a front conservatory	Approved	07.11.1994

## **Site Description**

The Four Stones Restaurant comprises a later Victorian detached property located in the Green Belt and Clent Conservation Area. The property had been extended including a single storey brick built extension and a conservatory at the front of the property. The conservatory on site at present is unauthorised.

## **Proposal Description**

Permission is sought to construct a conservatory similar to that granted in 2016. However, the overall height of the structure would be slightly lower than that approved in 2016.

## **Assessment of Proposal**

Planning Permission was granted under application 16/0403/FUL for; 'Demolition of front sunroom and replace with new flat roof sunroom'. The development has been implemented on site, but not in accordance with the approved drawing. The replacement to the original sunroom/conservatory includes a dominant roof structure.

Retrospective permission was sought under application 17/00646/FUL to regularise the development. However, the proposal raised issues associated with the site's location in the Green Belt and within the Clent Conservation Area and was subsequently refused. The applicant appealed the decision, but the appeal was subsequently dismissed.

Following on from the dismissed appeal, The Council have taken enforcement action in respect to the unauthorised structure. The applicant made 3 appeals against the enforcement notice. The enforcement appeals were initially dismissed, however, the appellant challenged the decisions in the High Court on a procedural matter. The High Court challenge was successful and the Court has ordered the Planning Inspectorate to re-determine the enforcement appeals.

In the meantime, the applicant is also looking at alternative approaches to resolve the enforcement matter and this application is a scheme showing modifications to the sunroom to address the refusal reasons of application 17/00646/FUL. The modifications include the removal of the pitched roof, canopy and supports, and replacing with a lower flat roof.

With reference to policy BDP4, application 16/0403/FUL allowed the general extent of the sunroom as it reflected the floor space of a previous conservatory. However, the structure built on site (as reflected in refused retrospective application 17/00646/FUL) is taller and its resultant bulk and mass is markedly greater than that previously approved under 16/0403 impacting upon the openness of the Green Belt and representing further harm.

Permission sought under this application shows a sunroom that is similar to that approved in 2016, however, the overall height of the sunroom is lower than that on site at present and would also be lower than the scheme approved under application 16/0403/FUL.

The modifications proposed under this application is for a more modest glazed structure than that granted permission in 2016. It is considered that the modifications proposed for the sunroom would not have an impact on the openness of the Green Belt and as such would accord with policy BDP.4 of the District Plan and the NPPF.

In addition, modifications proposed for the sunroom will have a neutral impact on the character and appearance of the Clent Conservation Area and would not harm the significance of the Area. The Conservation Officer raises no objection to the proposal.

## **Neighbour objections**

Comments have been submitted from neighbouring occupiers in respect to the structure that has been built on site without the benefit of planning permission. A neighbour has also raised comments in respect to noise etc. However, Worcestershire Regulatory Services raise no objections to the proposal.

## **Planning obligations**

Due to the unauthorised nature of the current development on site, a Legal Agreement is proposed for this scheme to ensure that the replacement works are carried out within a limited timeframe. Given the enforcement issues on this site, it would be appropriate to ensure the works that form part of this application are carried out promptly within a suitable timeframe from the date of this permission. Although it is noted that the Hearing date for the enforcement appeal is fixed for 24 August 2021 and the date of the decision of the enforcement appeal is likely to be within a couple of months of the date of the Hearing.

The applicant is agreeable to a Legal Agreement and such an Agreement is currently in the process of being drafted.

## **Conclusion**

An unauthorised structure exists on site at present. The works proposed under this application would be an acceptable solution to resolving the unauthorised works on site. The modifications would be more in keeping with the building and as such would be acceptable in a Conservation Area setting, whilst the scale of the development would be reduced having minimal harm on the openness of the Green Belt. The modifications proposed for the sunroom are acceptable and would be in accordance with policies in the District Plan and the NPPF.

## **RECOMMENDATION:**

- (a) **MINDED to GRANT** full planning permission:
- (b) That DELEGATED POWERS be granted to the Head of Planning, Regeneration and Leisure to determine the application following the receipt of a suitable and satisfactory legal mechanism in relation to the following matters:-
  - (i) To undertake and complete the works within 6 calendar months from the date of the grant of planning permission 20/00443/FUL.
  - (ii) Planning Obligation Monitoring Fee: £TBC.
- (c) And that DELEGATED POWERS be granted to the Head of Planning and Regeneration to agree the final scope and detailed wording and numbering of conditions as set out in the list at the end of this report.

## **Conditions:**

- 1) The development to which this permission relates must be begun within 4 months from the date of the grant of this permission.

Reason: In accordance with the requirements of Section 91(1) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2) The development hereby approved shall be carried out in accordance with the following plans and drawings:

Site location plan Dwg. No. FS/22  
Proposed alterations to sunroom Dwg. No. FS/21 Rev.a

Reason: To provide certainty to the extent of the development hereby approved in the interests of proper planning.

- 3) Prior to their first installation, details of the form, colour and finish of the materials to be used externally on the roof shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.

Reason: To ensure that the development is satisfactory in appearance, to safeguard the visual amenities of the area.

**Case Officer:** Sharron Williams Tel: 01527 534061 Ext 3372  
Email: sharron.williams@bromsgroveandredditch.gov.uk

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# 20/00443/FUL

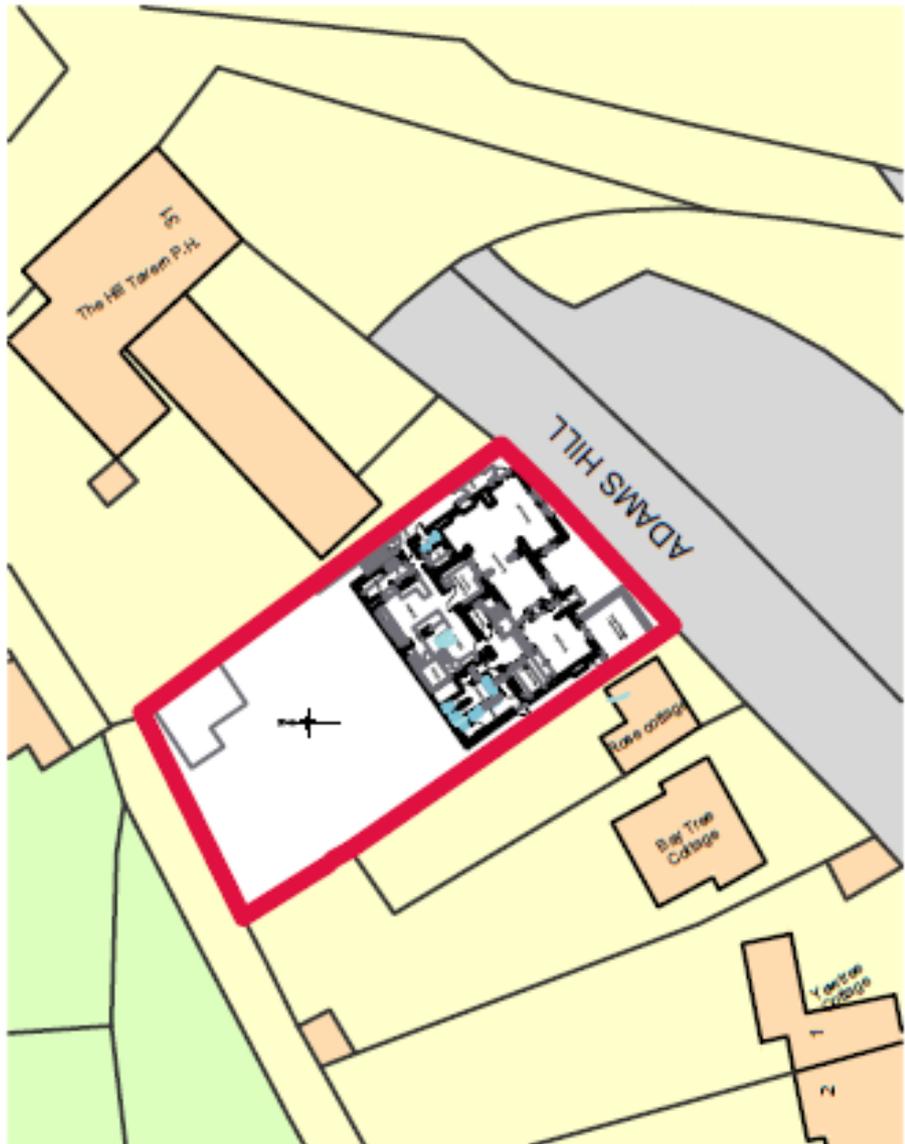
Four Stones Restaurant, Adams Hill, Clent

Glazed sun room (part retrospective): remove sloped roof and replace with flat aluminium-framed glazed roof, retaining the remaining structure as existing

Recommendation: That permission be Approved

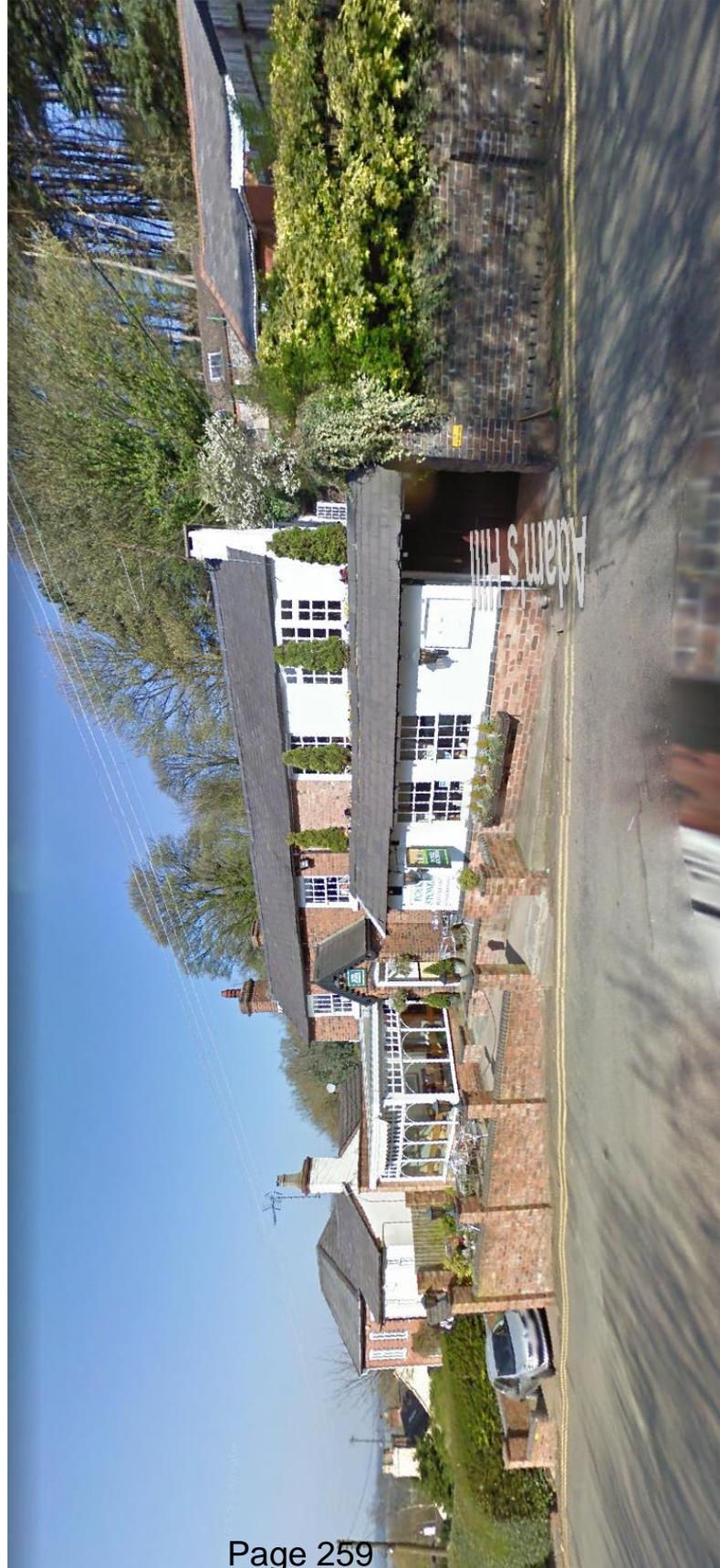
Agenda Item 13

# Site Location Plan



# Previous conservatory at the site

## Agenda Item 13



# Scheme approved under application ref: 16/0403/FUL



Agenda Item 13

Sunroom on site at present



# Agenda Item 13





DATED

29 July, 2021

**PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND COUNTRY  
PLANNING ACT 1990**

RELATING TO LAND AT

**FOUR STONES RESTAURANT, ADAMS HILL, CLENT, STOURBRIDGE DY9  
9PS**

between

COUNCIL

and

OWNER

and

MORTGAGEE

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THIS DEED is dated *the 29<sup>th</sup> July*, 2021

- (1) Bromsgrove District Council of Parkside, Market Street, Bromsgrove, Worcs. B61 8DA (**Council**).
- (2) AMRIK SINGH BHANDAL, BALBIR SINGH BHANDAL and BALJIT SINGH BHANDAL care of The Bhandal Dental Practice, 74 Birmingham Road, Rowley Regis B65 9BA. (**Owner**).
- (3) LLOYDS BANK PLC (Co. Regn. No. 2065) of Dept. No.9612 of Pendeford Securities Centre, Pendeford Business Park, Wobaston Road, Wolverhampton WV9 5HZ (**Mortgagee**).

## BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The Owner is the freehold owner of the Property subject to a mortgage in favour of the Mortgagee but otherwise free from encumbrances.
- (C) The Owner has made the Planning Application and is proposing to carry out the Development.
- (D) The Mortgagee is the registered proprietor of the charge dated 26 February 2016 referred to in entry number 1 of the charges register of Title number HW98537 and has agreed to enter into this Deed to give its consent to the terms of this Deed.
- (E) The Council having regard to the provisions of relevant planning policy and to all other material considerations considers that Planning Permission should be granted for the Development subject to the prior completion of this Deed.

## AGREED TERMS

### 1. INTERPRETATION

The following definitions and rules of interpretation apply in this Deed:

#### 1.1 Definitions:

**Challenge Period:** the date falling 6 weeks and 10 Working Days following the issue of the Planning Permission.

**Commencement of Development:** the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this Deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; site survey works; temporary access construction works;

archaeological investigation; and erection of any fences and hoardings around the Property.

**Commence and Commences** shall be construed accordingly.

**Commencement Date:** the date Development Commences.

**Development:** the development of the Property authorised by the Planning Permission.

**Enforcement Notice:** the notice issued by the Council dated 27 November 2018 under reference 17/00076/PLAN requiring the removal of the Sun Room

**Finally Determined:** the earlier of the following:

- a) the date when the Challenge Period has expired without any Third Party Application having been made; or
- b) where a Third Party Application has been made permission to bring a Third Party Application (where required) has not been granted and the period within which an application for permission to appeal against such refusal has expired without a further Third Party Application being made; or
- c) the Planning Permission is finally determined such that the Planning Permission or any further redetermination decision following any referral of the matter to the High Court or Court of Appeal is issued so that all rights of appeal or challenge are exhausted finally withdrawn finally dismissed or finally discontinued

and **Final Determination** shall be construed accordingly.

**Plan:** the plan attached as Annex A.

**Planning Application:** the application for planning permission made on 13 April 2020 for Glazed sun room (part retrospective): remove sloped roof and replace with flat aluminium-framed glazed roof, retaining the remaining structure as existing', registered by the Council under reference number 20/00443/FUL.

**Planning Permission:** the planning permission to be granted by the Council in respect of the Planning Application in the form of the draft attached as **Annex B**.

**Property:** the land at Four Stones Restaurant, Adams Hill, Clent, Stourbridge Worcestershire DY9 9PS shown edged red on the Plan and registered at HM Land Registry with absolute title under title number HW98537.

**Sun Room:** the glazed extension to the front of the restaurant building located on the Property at the date hereof

**TCPA 1990:** Town and Country Planning Act 1990.

**Third Party Application:** a third party's application for judicial review of the Planning Permission (as applicable) including an application to a higher

court appealing against a judgment in respect of a Third Party Application given in a lower court.

**Working Day:** any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

**Works:** the works to be undertaken on the Property comprising the removal of the sloping glazed roof to the Sun Room and its replacement with a flat glazed roof in substitution therefore pursuant to the Planning Permission.

- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** excludes faxes and e-mail.
- 1.11 A reference to **this Deed** or to any other Deed or document referred to in this Deed is a reference to this Deed or such other Deed or document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.

- 1.12 References to clauses and Schedules are to the clauses and Schedules of this Deed.
- 1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

## 2. **STATUTORY PROVISIONS**

- 2.1 This Deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.
- 2.2 The covenants, restrictions and obligations contained in this Deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 The covenants, restrictions and obligations contained in this Deed are enforceable in relation to the Property by the Council in accordance with section 106 of the TCPA 1990.

## 3. **CONDITIONALITY**

The provisions of this Deed shall have immediate effect upon the completion of the Deed save that Clause 4 shall not have effect unless and until the Council has issued the Planning Permission

## 4. **COVENANTS TO THE COUNCIL**

The Owner and the Mortgagee covenant with the Council to observe and perform the covenants, restrictions and obligations contained in Schedule 1.

5. **COVENANTS BY THE COUNCIL**

The Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule 2.

6. **MORTGAGEE'S CONSENT**

6.1 The Mortgagee consents to the completion of this Deed and declares that its interest in the Property shall be bound by the terms of this Deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Property.

6.2 The Mortgagee shall have no liability under this Deed unless and until it becomes a mortgagee in possession of the Property (or part of it) or appoints a receiver or administrative receiver under the charge or exercises its power of sale; in which event (and in respect only of breaches occurring between that date and the date on which it ceases to be a mortgagee in possession of the Property (or part of it) or until the end of the period of receivership or the completion of the exercise of the power of sale), it and its successors in title will be bound by the obligations as if it were a person deriving title from the Owner.

7. **RELEASE**

No person shall be liable for any breach of a covenant, restriction or obligation contained in this Deed after parting with all of its interest in the Property, or the part of the Property in respect of which such breach occurs, except in respect of any breach subsisting prior to parting with such interest.

8. **DETERMINATION OF DEED**

The obligations in this Deed (with the exception of clause 10) shall cease to have effect if before the Commencement of Development, the Planning Permission:

- (a) expires;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge.

9. **LOCAL LAND CHARGE**

This Deed is a local land charge and shall be registered as such by the Council.

10. **COUNCIL'S COSTS**

The Owner shall pay to the Council on or before the date of this Deed its monitoring fee in the sum of £440.00 and the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this Deed in the sum of £534.00.

11. **OWNERSHIP**

11.1 The Owner warrants that no person other than the Owner and the Mortgagee has any legal or equitable interest in the Property.

11.2 Until the covenants, restrictions and obligations in Schedule 1 have been complied with, the Owner will give to the Council within 20 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

(a) the name and address of the person to whom the disposition was made; and

(b) the nature and extent of the interest disposed of.

12. **REASONABLENESS**

Any approval, consent, direction, authority, agreement or action to be given by the Council under this Deed shall not be unreasonably withheld or delayed.

13. **CANCELLATION OF ENTRIES**

13.1 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged or cease to have effect (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.

13.2 Following the performance and full satisfaction of all the terms of this agreement or if this Deed is determined pursuant to clause 8 or if the Owner's obligations cease and determine pursuant to paragraph 1 of Schedule 1 below (and subject to the payment of the Council's reasonable and proper costs and charges) the Council will on the written request of the Owner cancel all entries made in the local land charges register in respect of this Deed.

14. **DISPUTES**

- 14.1 This clause does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.
- 14.2 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed (including any agreement approval consent or expression of satisfaction) any party may give notice to the others to refer such dispute or difference for determination of the matter in question to an independent and suitable person.
- 14.3 The notice shall propose an appropriate expert who shall hold appropriate professional qualification to determine the matter in question and shall specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 14.4 The parties shall endeavour to agree on the identification and appointment of the person to determine the dispute but in the absence of agreement the person shall be appointed by or on behalf of the President or equivalent officer of the relevant professional body operating in England and Wales for the regulation of that profession (or in the event of any dispute over the appointment by the President or next most senior available officer of the Law Society)
- 14.5 The appointed person is to act as an independent expert and shall act on the following basis (without prejudice to the ability of the parties to agree an alternative timetable or basis or for the appointed person to direct an alternative timetable):
- (a) each party may make written representations to the appointed person within ten Working Days of his appointment and will copy the written representations to the other party;
  - (b) each party is to have a further ten Working Days to make written comments on the other's representations to the appointed person and will copy the written comments to the other party;
  - (c) the appointed person is to be at liberty to call for such further written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
  - (d) the appointed person is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;

- (e) the appointed person is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision;
- (f) the appointed person is to use all reasonable endeavours (allowing for the complexity and nature of the dispute) to publish his decision within 30 working days of his appointment, but the appointed person shall in any event give written notice of his decision not more than 30 days after the conclusion of any hearing that takes place or after the final written representation provided for in any timetable set by the appointed person.

14.6 The parties agree that the appointed person's determination shall be final and binding on the parties in the absence of manifest error

14.7 The responsibility for the costs of referring a dispute to an appointed person, including costs connected with the appointment of the appointed person and the appointed person's own costs, and the legal and other professional costs of any party in relation to a dispute, will be decided by the appointed person.

15. **NO FETTER OF DISCRETION**

Nothing (contained or implied) in this Deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

16. **WAIVER**

No failure or delay by the Council to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17. **FUTURE PERMISSIONS**

Nothing in this agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

18. **NOTICES**

18.1 Any notice to be given under this Deed must be in writing and must be:

- (a) delivered by hand; or

- (b) sent by pre-paid first class post or other next working day delivery service.

18.2 Any notice to be given under this Deed must be sent to the relevant party as follows:

- (a) to the Council at Parkside, Market Street, Bromsgrove, Worcs. B61 8DA marked for the attention of Head of Legal and Democratic Services;
- (b) to the Owner at The Bhandal Dental Practice, 74 Birmingham Road, Rowley Regis B65 9BA marked for the attention of Mr Baljit Bhandal
- (c) to the Mortgagee at Lloyds Bank, 125 Colmore Row, Birmingham, West Midlands, B3 3SF marked for the attention of Jemal Omar Relationship Director, Commercial Banking, Mid Corporate, West Midlands

or as otherwise specified by the relevant party by notice in writing to each other party.

18.3 Any notice given in accordance with clause 18.1 and clause 18.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or
- (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

18.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 19. THIRD PARTY RIGHTS

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

20. **GOVERNING LAW**

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

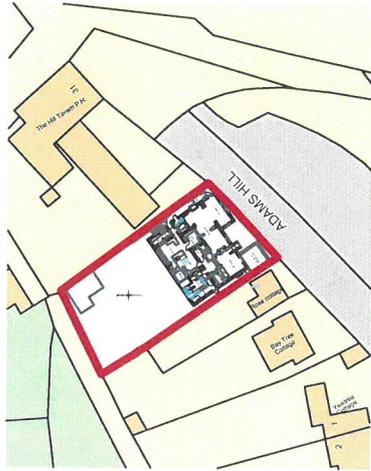
This document has been executed as a Deed and is delivered and takes effect on the date stated at the beginning of it.

## Schedule 1 Covenants by the Owner to the Council

1. To undertake and complete the Works by the date falling 6 calendar months from the date on which the Planning Permission is Finally Determined PROVIDED THAT in the event that within the 6 month period referred to in this paragraph 1 planning permission is granted in connection with the Property (other than the Planning Permission) the implementation of which would preclude or impede the implementation of the Works, the Owner shall not be obliged to undertake the Works and the obligations on the Owner in this Deed shall cease and determine with effect from the date of implementation of such planning permission and the Council shall withdraw the Enforcement Notice pursuant to paragraph 4 of Schedule 2 below; and
2. Upon completion of the Works to serve a Notice of Completion on the Council ("**the Owner's Notice of Completion**")

## Schedule 2 Covenants by the Council

1. To issue the Planning Permission as soon as practicable and within 14 days from the date of this Deed; and
2. Within 10 Working Days of receipt of the Owner's Notice of Completion referred to in paragraph 2 of Schedule 1 above to inspect the Works and:
  - (i) (if applicable) notify the Owner forthwith of any remedial works required to procure that the Works are fully completed pursuant to the Planning Permission and thereafter re-inspect the Works within 10 Working Days of any subsequent Owner's Notice of Completion until such time as the Works are completed pursuant to the Planning Permission; and
  - (ii) issue written confirmation to the Owner that the Works are completed (the "**Council's Notice of Completion**"); and
3. If the Council fails to inspect or re-inspect or notify the Owner of any remedial works required within the timescales specified in paragraph 2 of this Schedule 2, and/or if it fails to issue a Notice of Completion within the timescales specified in paragraph 2 of this Schedule 2 following a satisfactory inspection it shall be deemed to have issued a Council's Notice of Completion upon the expiry of the relevant timescale referred to in paragraph 2 of this Schedule 2
4. Within 10 Working Days of the earlier of
  - (i) the Council's Notice of Completion (whether issued pursuant to 2(ii) of this Schedule 2 or deemed to have been issued pursuant to paragraph 3 of this Schedule 2); or
  - (ii) the date of implementation of such planning permission (other than the Planning Permission) as is referred to at paragraph 1 of Schedule 1to withdraw the Enforcement Notice pursuant to s173A TCPA



O.S. Plan 1:1250



TITLE: Location Plan  
The Four Stones Restaurant  
Adams Hill  
Client: DY9 9PS

DRAWING NO: FS/22 REV: -

DATE: March 2020

SCALE: 1:1250

**NCR** ARCHITECTURAL DESIGN &  
TOWN PLANNING  
8 Windsor Road  
Halesowen  
West Midlands  
B63 4BE

Mob - 07956 805316 neilranford@btinternet.com

**Annex B. Draft Planning Permission**

# BROMSGROVE DISTRICT COUNCIL

Messrs AS, BS and BS Bhandal  
C/O Miss Suzanne Tucker  
FBC Manby Bowdler LLP  
Routh House Hall Court  
Hall Park Way  
Telford  
TF3 4NJ

## Grant of Planning Permission subject to Conditions

<b>APPLICATION:</b>	20/00443/FUL
<b>LOCATION:</b>	Four Stones Restaurant, Adams Hill, Clent, Stourbridge
<b>PROPOSAL:</b>	Glazed sun room (part retrospective): remove sloped roof and replace with flat aluminium-framed glazed roof, retaining the remaining structure as existing
<b>DECISION DATE:</b>	Date missing

Bromsgrove District Council as the Local Planning Authority grants planning permission in accordance with the Town and Country Planning Act 1990 and The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) for the proposal described above. This permission is subject to conditions which must be complied with and are set out below:

### Conditions

- 1) The development to which this permission relates must be begun within 4 months from the date of the grant of this permission.

Reason: In accordance with the requirements of Section 91(1) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2) The development hereby approved shall be carried out in accordance with the following plans and drawings:

Site location plan Dwg. No. FS/22  
Proposed alterations to sunroom Dwg. No. FS/21 Rev.a

Reason: To provide certainty to the extent of the development hereby approved in the interests of proper planning.

- 3) Materials to be used externally on the walls and roofs shall be in accordance with those annotated on Dwg. No. FS/21 Rev.a. The development shall be carried out in accordance with those details.

Reason: To ensure that the development is satisfactory in appearance, to safeguard the visual amenities of the area.

Signature missing

**Reason**

This proposal has been assessed against the following documents

**Bromsgrove District Plan**

BDP1 Sustainable Development Principles

BDP4 Green Belt

BDP19 High Quality Design

BDP20 Managing the Historic Environment

**Others**

Bromsgrove High Quality Design SPD

NPPF National Planning Policy Framework (2019)

NPPG National Planning Practice Guidance

DRAFT

12735

The common seal of BROMSGROVE DISTRICT COUNCIL was affixed to this document in the presence of:



[Redacted signature area]

Authorised signatory

Signed as a Deed by AMRIK SINGH BHANDAL in the presence of:

[Redacted signature area]

SIGNATURE OF OWNER

[Redacted signature area]

SIGNATURE OF WITNESS

WITNESS NAME

[Redacted witness name]

WITNESS ADDRESS

[Redacted witness address]

WITNESS OCCUPATION

[Redacted witness occupation]

Signed as a Deed by BALBIR SINGH BHANDAL the presence of:

[Redacted signature area]

SIGNATURE OF OWNER

SIGNATURE OF WITNESS

WITNESS NAME

[Redacted witness name]

WITNESS ADDRESS

[Redacted witness address]

WITNESS OCCUPATION

[Redacted witness occupation]

Signed as a Deed by BALJIT  
SINGH BHANDAL in the presence  
of:



SIGNATURE OF OWNER



SIGNATURE OF WITNESS

WITNESS NAME



WITNESS ADDRESS



WITNESS OCCUPATION



Executed as a Deed by LLOYDS  
BANK PLC acting by

[Redacted]

NAME OF DIRECTOR

[Redacted]

Signature of Director

a director, in the presence of:

[Redacted]

SIGNATURE OF WITNESS:

WITNESS NAME :

WITNESS ADDRESS :

[Redacted]

WITNESS OCCUPATION:

# BROMSGROVE DISTRICT COUNCIL

Messrs AS, BS and BS Bhandal  
C/O Miss Suzanne Tucker  
FBC Manby Bowdler LLP  
Routh House Hall Court  
Hall Park Way  
Telford  
TF3 4NJ

## Grant of Planning Permission subject to Conditions

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<b>APPLICATION:</b>	20/00443/FUL
<b>LOCATION:</b>	Four Stones Restaurant, Adams Hill, Clent, Stourbridge
<b>PROPOSAL:</b>	Glazed sun room (part retrospective): remove sloped roof and replace with flat aluminium-framed glazed roof, retaining the remaining structure as existing
<b>DECISION DATE:</b>	30th July 2021

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Bromsgrove District Council as the Local Planning Authority grants planning permission in accordance with the Town and Country Planning Act 1990 and The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) for the proposal described above. This permission is subject to conditions which must be complied with and are set out below:

### Conditions

- 1) The development to which this permission relates must be begun within 4 months from the date of the grant of this permission.

Reason: In accordance with the requirements of Section 91(1) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2) The development hereby approved shall be carried out in accordance with the following plans and drawings:

Site location plan Dwg. No. FS/22  
Proposed alterations to sunroom Dwg. No. FS/21 Rev.a

Reason: To provide certainty to the extent of the development hereby approved in the interests of proper planning.

- 3) Materials to be used externally on the walls and roofs shall be in accordance with those annotated on Dwg. No. FS/21 Rev.a. The development shall be carried out in accordance with those details.

Reason: To ensure that the development is satisfactory in appearance, to safeguard the visual amenities of the area.



Ruth Barnford  
Head of Planning and Regeneration

### **Reason**

This proposal has been assessed against the following documents

#### **Bromsgrove District Plan**

BDP1 Sustainable Development Principles

BDP4 Green Belt

BDP19 High Quality Design

BDP20 Managing the Historic Environment

#### **Others**

Bromsgrove High Quality Design SPD

NPPF National Planning Policy Framework (2021)

NPPG National Planning Practice Guidance

#### Assessment of Proposal

Planning Permission was granted under application 16/0403/FUL for; 'Demolition of front sunroom and replace with new flat roof sunroom'. The development has been implemented on site, but not in accordance with the approved drawing. The replacement to the original sunroom/conservatory includes a dominant roof structure.

Retrospective permission was sought under application 17/00646/FUL to regularise the development. However, the proposal raised issues associated with the site's location in the Green Belt and within the Clent Conservation Area and was subsequently refused. The applicant appealed the decision, but the appeal was subsequently dismissed.

Following on from the dismissed appeal, The Council have taken enforcement action in respect to the unauthorised structure. The applicant made 3 appeals against the enforcement notice. The enforcement appeals were initially dismissed, however, the appellant challenged the decisions in the High Court on a procedural matter. The High Court challenge was successful and the Court has ordered the Planning Inspectorate to re-determine the enforcement appeals.

In the meantime, the applicant is also looking at alternative approaches to resolve the enforcement matter and this application is a scheme showing modifications to the sunroom to address the refusal reasons of application 17/00646/FUL. The modifications include the removal of the pitched roof, canopy and supports, and replacing with a lower flat roof.

With reference to policy BDP4, application 16/0403/FUL allowed the general extent of the sunroom as it reflected the floor space of a previous conservatory. However, the structure built on site (as reflected in refused retrospective application 17/00646/FUL) is taller and its resultant bulk and mass is markedly greater than that previously approved under 16/0403 impacting upon the openness of the Green Belt and representing further harm.

Permission sought under this application shows a sunroom that is similar to that approved in 2016, however, the overall height of the sunroom is lower than that on site at present and would also be lower than the scheme approved under application 16/0403/FUL.

The modifications proposed under this application is for a more modest glazed structure than that granted permission in 2016. It is considered that the modifications proposed for the sunroom would not have an impact on the openness of the Green Belt and as such would accord with policy BDP.4 of the District Plan and the NPPF.

In addition, modifications proposed for the sunroom will have a neutral impact on the character and appearance of the Clent Conservation Area and would not harm the significance of the Area. The Conservation Officer raises no objection to the proposal.

#### Neighbour objections

Comments have been submitted from neighbouring occupiers in respect to the structure that has been built on site without the benefit of planning permission. A neighbour has also raised comments in respect to noise etc. However, Worcestershire Regulatory Services raise no objections to the proposal.

#### Planning obligations

Due to the unauthorised nature of the current development on site, a Legal Agreement is proposed for this scheme to ensure that the replacement works are carried out within a limited timeframe. Given the enforcement issues on this site, it would be appropriate to ensure the works that form part of this application are carried out promptly within a suitable timeframe from the date of this permission. Although it is noted that the Hearing date for the enforcement appeal is fixed for 24 August 2021 and the date of the decision of the enforcement appeal is likely to be within a couple of months of the date of the Hearing.

The applicant is agreeable to a Legal Agreement and such an Agreement is currently in the process of being drafted.

#### Conclusion

An unauthorised structure exists on site at present. The works proposed under this application would be an acceptable solution to resolving the unauthorised works on site. The modifications would be more in keeping with the building and as such would be acceptable in a Conservation Area setting, whilst the scale of the development would be reduced having minimal harm on the openness of the Green Belt. The modifications proposed for the sunroom are acceptable and would be in accordance with policies in the District Plan and the NPPF.

#### Informatives

- 1) Proactive engagement by the local planning authority was not necessary in this case as the proposed development was considered acceptable as initially submitted.
- 2) A Legal Agreement forms part of this permission.

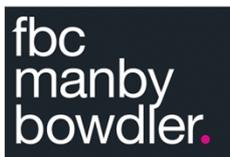
#### For your information

##### Appealing the Decision

If you feel that the conditions are not acceptable you can appeal to the Secretary of State through the Planning Inspectorate. This appeal should be made by 28th January 2022 unless supported by special circumstances. The appropriate form and further information on how to appeal can be found at <http://www.planningportal.co.uk/planning/appeals/planningappeals> or by contacting the planning Inspectorate Customer Services Team on 0303 444 5000. If you want a planning appeal to follow the inquiry procedure you should notify the Local Planning Authority and also the Planning Inspectorate at least 10 working days before submitting your planning appeal.

**Purchase Notices**

If Bromsgrove District Council or the Secretary of State has refused planning permission or granted it conditionally, the landowner may claim that the land is incapable of reasonable beneficial use, and for this reason may serve the Council a purchase notice requiring them to purchase the land. In certain circumstances, a claim may be made against Bromsgrove District Council for compensation. Further information about purchase notices can be found at: <http://www.legislation.gov.uk/ukpga/1990/8/part/VI>



S O L I C I T O R S

Routh House  
Hall Court  
Hall Park Way  
Telford TF3 4NJ

Attention: Nicola Davison  
The Planning Inspectorate  
Room 3B  
Temple Quay House  
2 The Square  
Bristol  
BS1 6PN

**Our ref** SRT/SRT/BHA85/8  
**Your ref**  
**Date** 25 June 2021

**By email only: [teame1@planninginspectorate.gov.uk](mailto:teame1@planninginspectorate.gov.uk)**

Dear Ms Davison

**Appeal Reference: APP/P1805/C/19/3219678**  
**(Linked cases: APP/P1805/C/19/3219679, APP/P1805/C/19/3219680)**  
**Appellant: Mr Baljit Singh Bhandal, Mr Balbir Singh Bhandal, Mr Amrik Singh Bhandal**  
**Property: Four Stones Restaurant, Adams Hill, Clent, Stourbridge, Worcestershire, DY9 9PS**

Thank you for your letter dated 7 June outlining the proposed scope of the redetermination, in relation to which we would like to comment as follows:

1. We note that the Inspector considers that the redetermination should extend to Grounds (a) and (f), and that it should include:
  - 1.1. *whether planning permission for the proposed alternative schemes B and C would be in relation to the whole or part of the sunroom that has been erected in breach of planning control; and*
  - 1.2. *if the answer is affirmative, whether planning permission should be granted for the proposed alternative schemes.*
2. However, we would consider that the circumstances have changed in a material way since the Appeal decision dated 17 October 2019: in the intervening period, the COVID-19 pandemic has significantly and demonstrably altered the economic circumstances nationally, locally, and for the business operating from the Property. The impact on the hospitality industry, and on the Appellant's restaurant business, in light of the restrictions on trade and the operational measures required upon re-opening, and the impact on its employees, are factors which are now material to the planning balance.
3. Accordingly, it is submitted that to limit the scope of the redetermination to whether the schemes referred to as Options B and C would be construed as comprising the whole or part of the breach complained of in the enforcement notice, and then to assess the planning merits of those schemes, is to adopt too narrow an approach. In our view, the Appellant's case under Ground (a) should be reconsidered afresh, and in full (to include a reassessment of the planning merits of the scheme referred to as Option A), in order that the balancing of planning merits and harms can be re-addressed to fully take account of the change in circumstances that has arisen in the intervening period.
4. In addition, in the context of the Ground (f) case, it is submitted that further consideration must be given to the requirement to make the building wind and water tight in the event that the Inspector does not consider it appropriate to grant planning permission for either of the alternative schemes comprised in Options A-C. Whether that is achieved by allowing the installation of the existing bi-fold doors used in the construction

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of the Sun Room, or some other means, is for a matter left open for the Inspector. The comments of Mr Justice Pepperall in the High Court Judgment in this context are acknowledged, but the limit of those observations should be noted, since this was considered to be a case whereby an extension of time under Ground (g) to allow the local planning authority to consider the merits of the proposed solution was an appropriate approach. Notwithstanding that however, it would be particularly prejudicial to the Appellant to adopt such an approach in particular circumstance where the restaurant building would be left exposed to the elements, potentially for a protracted period, until planning permission could be secured; and indeed there is no guarantee that a planning permission would be secured within the timescale allowed.

5. Accordingly, it is submitted that the redetermination should address that aspect also.
6. Finally, it is noted that the Inspector does not propose to consider the case under Ground (g); it is assumed that the decision of Inspector J Whitfield to allow 9 months for the parties to explore any alternatives which would overcome the harm identified in relation to the Sun Room, will stand, and we would invite the Inspector to please confirm that to be the case. If that cannot be confirmed, it is submitted that Ground (g) also be included with the scope of the redetermination.
7. Further, if the consideration referred to above in relation to Option D is not accepted, then it is submitted that further consideration be given to Ground (g), as it is apparent that 9 months may not necessarily be long enough to enable the Appellant to secure permission for the closure of the opening in the Property frontage (in light of the timescales experienced in connection with the planning application which is still being dealt with under reference 20/00443/FUL, having been submitted on 6 April 2020). We would be grateful for the Inspector's confirmation that the scope of the redetermination will extend to include these matters, and further submissions will be made in support of the Appellant's case in a further supplemental Statement.

We look forward to hearing further.

Kind regards.

Yours sincerely



**Suzanne Tucker**  
**FBC Manby Bowdler LLP**  
**Email: S.Tucker@fbcmb.co.uk**  
**Direct Dial: 01952 208426**

## Suzanne Tucker

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**From:** TeamE1 <TeamE1@planninginspectorate.gov.uk>  
**Sent:** 08 July 2021 12:38  
**To:** Suzanne Tucker; newplan@bromsgroveandredditch.gov.uk  
**Subject:** RE: URGENT: Planning Inspectorate APP/P1805/C/19/3219678: Four Stones Restaurant, DY9 9PS (FBCMB/BHA85/8)

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

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Dear Suzanne

Following our telephone conversation this morning, I can confirm that we will extend the deadline to both parties for the submission of statements until Monday 2<sup>nd</sup> August 2021.

With regards to the scope of the redetermination, my interpretation of the Inspectors request was that grounds (a) and (f) will be redetermined in full. Furthermore, in relation to ground (g), whilst the Inspector hasn't specified that this ground is up for redetermination, if the circumstances since the original appeal have changed since the original appeal and this now affects the compliance period, please include these details within your statement.

Kind regards

Nicola Davison

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**From:** Suzanne Tucker  
**Sent:** 07 July 2021 11:48  
**To:** TeamE1  
**Subject:** URGENT: Planning Inspectorate APP/P1805/C/19/3219678: Four Stones Restaurant, DY9 9PS (FBCMB/BHA85/8)  
**Importance:** High

Dear Nicola

Further to my email below and the correspondence attached (a further copy of which is attached for your reference), I look forward to hearing from you as to the scope of the appeal hearing.

In this context, I note that the deadline for the parties to submit statements ahead of the appeal is currently 16 July, which is of course next Friday.

In light of the current uncertainty as to the scope of the hearing, and our Counsel's limited availability during the next fortnight, I would be very grateful if we could agree an extension to that deadline please, to allow us the opportunity to engage Counsel in preparing that statement once the scope of the hearing is confirmed.

I look forward to hearing from you just as soon as you are able.

Kind regards