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Our Ref:

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Head of Planning
Planning Services
Surrey Heath Borough Council
Surrey Heath House
Knoll Road
Camberley
Surrey, GU15 3HD

Dear Sirs

SECTION 73 APPLICATION – VARIATION/REMOVAL OF CONDITIONS 2, 3, 5, 7, 8, 9, 11 AND 12 OF PLANNING PERMISSION REFERENCE 23/1142/FFU

DEMOLITION OF EXISTING DETACHED DWELLING AND CONSTRUCTION OF REPLACEMENT DETACHED DWELLING WITH GARAGE

FAIRFIELDS, PENNYPOT LANE, CHOBHAM, SURREY, GU24 8DJ

On 5 January 2024, the Council granted planning permission for the above development at the above property.

Whilst the applicant was very grateful to have obtained planning permission, which followed on from a previously refused application in September 2022, and having reviewed the details of the permission, we wish to make one relatively minor change to the layout of the scheme and wish to question some of the imposed conditions.

The permission was made the subject of a total of some 12 conditions. The approved development has yet to be implemented.

In terms the site layout, the applicant now wishes to re-position the proposed detached garage building 1 metre further back into the site which should prove relatively straightforward to the Council. The proposal is also to connect the new dwelling to existing public foul sewer rather than to a private sewage treatment plant on site.

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Under Condition 7, the Council has proposed the removal of certain permitted development rights for further development on the site. For the reasons set out in this Statement, we do not consider that such a condition is reasonable or necessary to make the approved development acceptable. This position is supported by a recent appeal decision relating to another property in the Borough and which addressed a similar issue.

Several conditions relate to ecology and biodiversity issues. Whilst we noted the formal response of the Surrey Wildlife Trust to the application, we question whether certain additional requirements were reasonable or necessary, and whether in fact enforceable. This relates to conditions 8, 9 and 11 of the planning permission.

Condition 12 relates to tree protection and method of construction issues. Whilst the application included some tree survey and tree protection information on the submitted drawings, there was no separate ‘agreed arboricultural method statement/impact assessment/tree protection plan’ as referred to in the wording of the condition. This may simply have been an administrative error on the Council’s part. It is suggested that, given the circumstances of the proposal, the requirements of this condition should simply refer to the approved Site Technical Plan.

The description of the proposed development, including the overall details of the proposed replacement dwelling, do not change.

This Statement simply seeks to offer a solution to the above issues whilst not materially detracting from the overall terms of the planning permission. However, we seriously question the removal of permitted development rights for future householder development on the site.

Prior to the determination of the planning application, there was some correspondence entered into between this planning practice (as agent) and the planning case officer in relation to conditions. This correspondence is referred to later in this Statement.

This application is accompanied by the following amended drawings:

- Revised Technical Site Plan Drawing PL01B
- Revised Hard and Soft Landscaping Plan and Proposed External Materials Drawing PL06B

This application is also accompanied by a copy of the following appeal decision, attached at Appendix 1 of this Statement:

- Longfield, Broadway Road, Windlesham (application reference 21/0546/FFU) dated 26 October 2022

Description of Site and Locality

The application site relates to a part single, part two-storey, detached, single-family dwellinghouse situated on the eastern side of Pennypot Lane, Chobham.

The dwelling is positioned towards the far north-eastern part of its plot together with its associated vehicular access and parking area. The property sits on a rectangular plot that benefits from a relatively large side garden in place of a long rear garden as is typical of properties found north of the site. There is a mature hedge along the road frontage.

The surrounding area is largely comprised by a mix of detached and semi-detached single-family dwellings whilst east of the site is an open field and south-east of the site directly adjoining is a light industrial space. However, the immediate locality is largely rural in character with the predominance of fields and pockets of woodland.

Relevant Planning History

The most relevant planning history which relates to the site was set out conveniently within the Officer's Delegated Report in respect of the approved planning application (reference 23/1142/FFU).

The current approved development was a revision to a previously refused application (reference 22/0567/FFU) in September 2022. The size, scale and visual impact of that previous proposal was deemed to be unacceptable on Green Belt grounds. Various revisions were made to overcome the objection to that application.

In May 2021, a Certificate of Lawfulness application (reference 20/1142/CES) was granted for single storey side and rear extensions following the demolition of some existing extensions. That development remains to be implemented.

In May 2023, a Prior Notification application (reference 23/0282/GPD) for an extra storey was refused on the grounds that it did not comply with the basic requirements of Class AA of the GPDO 2015 (as amended).

The Approved Development

Planning permission was granted on 5 January 2024 (reference 23/1142/FFU) for a replacement dwelling together with a detached garage building on the site. The replacement dwelling was in the same position as the existing dwelling with the detached garage building being sited towards the northern boundary of the site. The overall amount of floorspace would be increased from 243 sqm to 310 sqm.

Use would be made of the existing vehicular access and frontage parking area.

The external material finish consisted of largely rendered elevations with a stone cladding to the central front to contrast, together with the use of a slate roof tiles.

In addition, a soft and hard landscaping scheme detailing boundary treatment and planting, together with a tree protection plan, were submitted with the application.

In the Officer's assessment of the application, in noting that the site was located within the Green Belt, they concluded that in taking all relevant factors into consideration, including the floorspace and volume increases of 23.2% and 26.3% respectively (and which fell within the Council's typical guideline of 30%) the proposal was not materially larger and was acceptable under Green Belt policy. This is an important consideration.

However, the Officer sought to explain that certain permitted development rights be removed, by stating at paragraph 6.3.7 the following:

'However, any further extensions or erection of outbuildings under permitted development rights would negate this balance. Therefore, in order to prevent any additional unacceptable harm to the Green Belt it is considered reasonable and necessary to attach a condition removing permitted development rights for Class A (extensions to the dwelling) and Class B (roof alterations) from the permitted dwelling.'

This was made the subject of Condition 7 of the Decision Notice.

The Council concluded that the proposal was acceptable in all other respects, including its scale, form and design, its impact upon the character and appearance of the area, highway safety and car parking, and in respect of ecology and trees subject to various conditions. It appears that many of the ecology-related conditions followed on from the Surrey Wildlife Trust in their consultation letter dated 22 December 2023.

The planning permission was made the subject of a total of some 12 conditions, which included some pre-commencement conditions in respect of ecology and biodiversity issues and some pre-occupation conditions.

The Application Proposal

This application relates to Conditions 2, 3, 5, 7, 8, 9 and 12 of the planning permission.

The first part of the application relates to the slight re-siting of the proposed detached garage building 1 metre further back into the site and closer to the rear boundary of the property. The separation to the rear boundary would be reduced from 2.7 metres to 1.7 metres.

This proposed change should be relatively straightforward given both the very modest change involved, its relationship to the neighbouring property to the north-east, and that it would provide some more manoeuvring space on the site frontage. In addition, the building would be less visible in views along the road.

Therefore, this application is accompanied by two revised drawings, being the Technical Site Plan (PL01B) and the Hard and Soft Landscaping and Proposed External Materials Plan

(PL06B). These drawings essentially show the proposed detached garage building in its re-sited position on the site.

The wording of Conditions 2, 3 and 5 would only need to be varied to refer to the revised drawings submitted as part of this application.

For clarity, there are no other proposed changes to the approved scheme.

This application seeks to focus on Condition 7 which relates to the removal of certain permitted developments rights; Condition 8 which relates to the requirement for a further badger survey; Condition 9 which relates to a reptile precautionary method of working; Condition 11 which relates to the requirement for a further updated bat survey; and Condition 12 which relates to tree protection and associated method of construction measures.

Planning Policy and Guidance Background

The planning policy position was set out within the Officer's Delegated Report. The site is located within the countryside outside of any defined settlement area and is subject to Green Belt policy.

In addition to the NPPF 2023 (Chapters 2, 4, 12, 13 and 15) there are the policies of the Local Development Plan for the area. Regard will be given to Policies CP1, CP2, CP3, CP6, CP12, CP14, DM9, DM10 and DM11 of the adopted Surrey Heath Core Strategy and Development Management Policies Document 2012 (CSDMP). In addition, regard may be given to the adopted Supplementary Planning Documents (SPD) including the Residential Design Guide 2017 (RDG) if relevant.

Legal Background to Conditions

The NPPF states at paragraph 55 that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

Paragraph 56 states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

In relation to 'tailoring planning controls to local circumstances', paragraphs 53 and 54 address the issue of the use of using Article 4 Directions and planning conditions in controlling national permitted development rights. Specifically, paragraph 54 states that planning conditions should not be used to restrict national permitted development rights, unless there is a clear justification for doing so.

Furthermore, the NPPG 2014 (as amended) advises that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in

exceptional circumstances (PPG ID 21a – 025-20140306). However, it is noted that exceptional circumstances are not defined and therefore it is necessarily a matter of planning judgment.

Assessment

Condition 7 – Permitted Development Rights

The imposition of this condition is of serious concern to the applicant.

Whilst we note the reasoning for the imposition of the condition in the Officer’s Delegated Report (see above) but for the reasons set out in this Statement, it is strongly argued that such a condition is not reasonable or necessary to make the development acceptable and has simply not been justified by the Council. It is also a badly worded condition.

There are deemed to be two parts to the condition: the first which seeks to restrict certain householder permitted development rights; and the second, which seeks to prevent any other extensions to the dwelling between the date of the decision and implementation of the approved development. The condition stated the following:

7. Notwithstanding the provisions of Class A and Class B of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any Order revoking and re enacting that Order) no further extensions, roof alterations, outbuildings shall be erected or undertaken without the prior approval in writing of the Local Planning Authority.

Any development under the Classes stated above undertaken or implemented between the date of this decision and the commencement of the development hereby approved shall be demolished and all material debris resulting permanently removed from the land within one month of the development hereby approved coming into first use.

Reason: In order not to prejudice the openness of the Green Belt and to be in accordance with the National Planning Policy Framework.

The basis for the imposition of Condition 7 was set out within the Officer’s Delegated Planning Report. This was after concluding that the proposal was acceptable in Green Belt policy terms.

The basic argument that we wish to present here is that the existing dwelling on site already benefits from permitted development rights and given that the proposal was found to be acceptable in all respects, it is difficult to understand why the removal of these same permitted development rights should be considered necessary.

The wording of the condition sets out the type of householder permitted development rights which are to be removed. As a result, further planning applications would be necessary for any development under these classes that would normally be possible within the curtilage of a dwelling house without the need for planning permission.

However, the wording and requirements of the condition are muddled and unclear. Whilst the condition seeks to remove permitted development rights under Classes A (enlargement,

improvement or alterations) and B (additions to the roof), it also refers to outbuildings but there is no reference to Class E which would cover such development.

Each of these permitted development rights is subject to further restrictions in respect of dwelling houses on article 2(3) land (Conservation Areas, National Parks and AONBs). However, the Green Belt does not fall within such land, which is listed at Part 1, Schedule 1 of the Order. Consequently, the same permitted development rights apply to dwellings within the Green Belt and to those not within it. It follows from this that the Government's fundamental aim in the Framework, to prevent urban sprawl by keeping land permanently open, does not extend to preventing permitted development within a domestic curtilage.

Further, prior to the grant of planning permission the subject of this application, there was nothing to prevent the owner of the property from carrying out further development within its curtilage. Indeed, the existing dwelling benefits from permitted development rights, which has already included permission for the erection of a single storey extension on the rear elevation. In our view, this restriction is not only unnecessary but unreasonable.

Whilst we have noted the reason stated for the imposition of the condition, there does not appear to be any local planning policy to support such a restriction. Indeed, the Council's local Development Plan is somewhat out of date and there is no specific policy or guidance (apart from the more general policy test set out within the NPPF 2023) to guide this type of proposal.

The appeal proposal represented a 23.2% increase in floorspace which was deemed to be acceptable to the Council, and which was within its 'informal guideline' of 30%.

The Council concluded that the proposal was acceptable in Green Belt policy terms and that no very special circumstances were required to justify the development. In our view, where a particular case may have been approved under very special circumstances, this could be argued to justify the removal of certain permitted development rights, but this is not the case here.

Whilst the reasoning given for the imposition of the condition is noted, but this appears vague. Firstly, in the Officer's Delegated Report it is stated that '*...in order to prevent any additional unacceptable harm to the Green Belt it is considered reasonable and necessary to attach a condition removing permitted development rights...*' This suggests that the proposed development has already caused some harm to the Green Belt which is not the case. The impact of that proposal was deemed to be acceptable.

Further, the reason for the condition refers to '*...not to prejudice the openness of the Green Belt...*' However, the Council has not demonstrated how the implementation of the stated permitted development rights would affect the openness of the Green Belt, or indeed harm to the wider character or appearance of the area.

The second part of the condition is of particular concern to our client and the implications for any further development on the site. This seeks to prevent any further development on the site (under the aforementioned classes) between the date of the decision and the implementation of the permission, and if so, suggests that any such development works should be subsequently

demolished. Given the wording of this part of the condition, this would effectively mean that the applicant could not carry out any further extensions to the existing lawful dwelling under permitted development. This is argued to be totally unreasonable and unacceptable and would go as far as suggesting that such a condition should not be included on planning permissions.

We now wish to refer to an appeal decision in the same Borough which supports our position. This decision related to a proposal for the erection of extensions and alterations to an existing dwelling on the edge of the village of Windlesham (see copy attached). This property was also located within the Green Belt and the appeal specifically related to the imposition of Condition 6 to that permission which restricted certain householder permitted development rights, including those under Classes A, B, D and E of Part 1 of Schedule 2 of the GPDO 2015 (as amended).

The appellant argued that the condition was unreasonable and unnecessary in protecting the character and appearance of the area, also noting that the site was subject of Green Belt policies of restraint.

Whilst it is noted that the circumstances of that case are different to that of the current application – for example involving extensions and alterations to an existing dwelling rather than a replacement dwelling, it is principle of adding such a condition that is the relevant issue here. At paragraphs 7 and 8 the Inspector stated the following:

7. I note that the wording of the Council's reason for the condition is the same as that in the Framework's Green Belt policy³. The Town and Country Planning (General Permitted Development) (England) Order (GPDO) 2015 (as amended) places no restrictions on permitted development rights in Green Belts unlike in, for example, national parks. I agree with the appellant that the same permitted development rights typically apply to dwellings within the Green Belt as those which are not. Paragraphs 147-149 of the Framework are only applicable to development that requires planning permission, as is the need to demonstrate very special circumstances.
8. For the reasons given above, I conclude that the removal of the subject condition would not harm the character or appearance of the appeal building or the surrounding area. Accordingly, the relevant tests in the Framework and the PPG have not been met in this case and the condition is neither reasonable nor necessary. There are no relevant development plan policies before me which conflict with this.

Therefore, for these reasons, such a condition is argued to fail the tests for conditions as set out in national policy in the relevant sections of the NPPF and NPPG. The condition should be deleted.

Condition 8 – Further Badger Surveys

In reference to the consultation response of the Surrey Wildlife Trust, they noted that the submitted Ecology Report identified the likely absence of active badger setts within and

adjacent to the development site. However, that signs of mammal activity have been identified within the development site and badgers are likely to be present locally. Notwithstanding, the Ecology Report recorded no badger setts on site.

The condition requires that a further badger survey be undertaken prior to the start of development works, but the condition requires this to be undertaken within a 30metre buffer zone in addition to the application site itself. Whilst we have no objection to such a condition in principle, the requirement for this to be undertaken within a wide buffer zone would not be practical or even possible given that this would involve land outside of the applicant's ownership and control. The condition would be difficult to enforce.

Although there is a field to the rear, there is an industrial site nearby and the road, so the likelihood of any badger setts would be minimal in our view. Further, the proposal involves the replacement of the existing dwelling in the same position with much of the garden area being unaffected by the development.

In view of the circumstances, it is argued that it would only be reasonable to request a further badger survey within the application site – that of the application property. The condition can be reworded accordingly.

Condition 9 – Reptile/Amphibian Precautionary Method of Working

It is considered that the requirements of this condition have already been set out within section 6.10 of the Ecology Report, which stated:

Reptiles and amphibians

6.10 The garden areas and tall ruderal boundary patch identified have potential to be used by common reptiles and amphibians such as slow worms and grass snakes present in the immediate area. Therefore, no additional surveys are required. Given the widespread distribution of reptiles and amphibians such as slow worms and grass snakes and the presence of some suitable habitat it is likely that they are using the site (in very low numbers). No formal surveys are required (on the basis that suitable habitat is retained) unless requested by the local authority. Instead, it is recommended that reasonable avoidance measures (RAMs) and habitat mitigation measures be included within the site Biodiversity Enhancements and Mitigation Plan (BEMP). Measures should include:

- Toolbox talks to raise awareness prior to any clearance and during construction;
- Works likely to disturb hibernating reptiles and amphibians should be timed outside of November to March inclusive;
- Piles of deadwood, log piles, compost heaps, brash, scrub, hedge should be checked by hand immediately prior to being cut/moved;
- Hazards such as open holes, pits, ditches and drains should be covered at night or fitted with ramps (at a reasonable angle) to allow animals to escape;
- Site should have a zero-litter policy to prevent animals becoming trapped in litter;
- If any reptiles and amphibians are found they should be moved outside the working area to suitable alternative habitat within the wider plot. Wychwood Environmental can be contacted for advice and guidance.

The stated condition is argued to be unnecessary and that this issue can simply be addressed by making direct reference to the relevant section of the Ecology Report. No further details need to be submitted to the Council for approval.

Condition 11 – Further Bat Surveys

In reference to the consultation response of the Surrey Wildlife Trust, they noted that the submitted Bat Emergence Survey report confirmed the presence of active bat roosts within the development site and that these roosts would be the subject of loss or disturbance as a result of the development. The Trust therefore advised that the applicant should appoint a registered consultant under the bat mitigation class licence to undertake the works.

In addition, the Trust advised that given the length of time since the last bat survey took place, an additional building inspection and/or survey will be required as part of any licence application. It further advised that the results of this additional survey be submitted to the LPA prior to commencement along with any revised bat mitigation that may be required following this survey.

The wording of the condition generally follows this advice. However, we question whether such a condition is reasonable or necessary given that the Trust clearly indicated that any building inspection/survey can be carried out as part of the licence application. This would appear to be an unnecessary duplication of control.

The submitted Ecology Report concluded as follows:

5.0 CONCLUSION

- 5.1 The house supports very low numbers of brown long eared bats in the loft space. Mitigation measures, as outlined in this report, are advised to be detailed in a Method Statement and carried out under a European Protected Species Mitigation (EPSM) or Bat Mitigation Class licence (BMCL). This is advised in order to avoid committing an offence and to safeguard the viability of local bat populations.
- 5.2 No further surveys are needed to inform the planning application. An additional building inspection maybe required as part of any licence application, as these must have been completed within three months of submitting the licence application to Natural England.

The Officer's Delegated Report makes reference to the imposition of conditions, it also makes reference to an informative to the effect that a bat mitigation licence from Natural England is required prior to any works which may affect bats. However, no such informative was included within the decision notice. In our view, such an informative should be sufficient in respect of this aspect of the proposal. The condition should therefore be deleted.

Condition 12 – Tree Protection/Method of Construction Statement

The main issue here is that the condition refers to an 'agreed arboricultural method statement/impact assessment' in addition to the 'tree protection plan along with the approved plans and particulars' when no such AMS was submitted with the application.

The tree information and tree protection plan were included as part of the submitted Technical Site Plan Drawing PL01A.

The site itself contained only two trees of any significance, which were located within the side garden area to the south-west of the dwelling and were shown to be separated and protected from the main development site by Herras fencing clearly shown on the above drawing. There were some hedgerows along the boundaries of the site.

It is unclear where this condition came from, as there is no reference to an assessment of trees in the Officer's Delegated Report and no reference to any consultation with the Council's Tree and Landscape Officer.

However, in respect of the previously refused application (reference 22/0567/FFU) for a similar development, the Council's Tree and Landscape Officer was consulted and simply

raised no objection subject to a tree protection plan to be submitted by condition. This would appear to have been a simple request.

The suggested condition would appear to be of standard wording, and which could be applied to any planning permission. The condition is also very ‘wordy’ and we question the need for such detail. It appears that the condition was imposed without any consideration being given to the actual details of the scale/type of development involved.

In our view, the requirements of such a condition could simply be tied to the relevant approved drawing (reference PL01A (or PL01B if subsequently accepted by the Council) which shows the particulars of tree protection measures. This would be proportionate to the type of development involved. The wording of the condition could simply be revised accordingly.

Other Matters

As advised in paragraph 56 of the NPPF, agreeing conditions early is beneficial to all parties involved in the process and can speed-up decision-making and that conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification, such as by obtaining the applicant’s agreement.

The earliest discussion with the case officer (Melissa Turney) took place on conditions took place late in the process, within emails dated 3 and 4 January 2024. The case officer sent through draft pre-commencement conditions in respect of possible further badger and bat surveys and a reptile precautionary method of working.

In our response, whilst we advised the applicant was keen to secure a planning permission, we were only prepared to accept the conditions if they were absolutely necessary. By reference to the submitted Ecology Report, we questioned the necessity of the proposed conditions.

Clearly, given that a decision was eventually made on 5 January, there was really no time to allow the applicant to give proper and full consideration to the conditions.

Conclusions

This is deemed to be a relatively straightforward Section 73 application which seeks to resolve issues which have arisen in respect of certain conditions imposed on approved application reference 23/1142/FFU dated 5 January 2024.

The principle of the proposed development, including that relating to the Green Belt and to its scale, form and design and impact has previously been accepted by the Council.

The only ‘physical’ change to the approved scheme involves the proposed re-siting of the approved detached garage building which is argued to be a relatively minor change to the overall scheme. Its impact should be acceptable.

The approved development can still be implemented in accordance with Conditions 2, 3 and 5 which relate to the plan numbers setting out the details of the proposed development.

In respect of Condition 7 in relation to certain permitted development rights, it has been argued that the imposition of this condition is overly restrictive and is not reasonable or necessary to make the development acceptable. This condition should therefore be deleted.

Whilst there is no objection in principle to the imposition of Condition 8 in relation to further badger surveys, the reference to an additional 30 metre buffer would not be practical and it is argued that reference to this part of the condition be deleted.

In respect of Condition 9 in relation to reptiles, it is argued that this condition can be reworded to simply refer to the relevant section of the submitted Ecology Report.

In respect of Condition 11 in relation to further bat surveys, it has been argued that this condition is unnecessary as such a survey will be required to be carried out as part any licence application. This condition should therefore be deleted.

Whilst there is no objection in principle to the imposition of Condition 12 in relation to tree protection/method of construction statement, adequate control in this case can be provided by a simple reference being made to the approved plans. The reference to ‘the agreed arboricultural method statement/impact assessment’ should be deleted from the condition.

This application is argued to represent a reasonable and practical solution to the issues which we have identified in respect of the planning permission.

The application would still comply with relevant national and local planning policy in respect of Green Belt, in achieving high-quality design and in the protection of any nature conservation interests on site as demonstrated within this Statement.

We would therefore request that the Council review the various conditions imposed, perhaps in conjunction with the Surrey Wildlife Trust where relevant. Should you have any questions please do not hesitate to contact me.

Yours sincerely
D&M PLANNING LIMITED

ANDREW BANDOSZ
Director