

PLANNING STATEMENT

Removal of planning conditions 2 and 3
attached to Appeal decision
APP/N4205/A/08/2062347 AT 694,
CHORLEY ROAD, BLACKROD, BL5 3NL.

MPD Built
Environment
Consultants Ltd

1. Introduction

This statement has been prepared to support the application to remove conditions 2 and 3 attached to the appeal decision APP/N4205/A/08/2062347 dated 4th June 2008.

The conditions in question read as follows:

2. *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that order), no extensions, porches, garages or outbuildings shall be erected within the curtilage of the dwelling house hereby approved.*

3. *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that order), no rooflights/dormer windows shall be formed or any alteration or addition made to the roof of the dwelling house hereby approved.*

The statement examines how these conditions no longer accord with the National Planning Policy Framework and the Government's direction of travel in terms of expanding permitted development rights, empowering householders to invest in their properties and deregulating the planning system to allow Local Planning Authorities to concentrate on delivering economic growth as opposed to being bogged down in minutiae and neighbour disputes.

2. Site and Surroundings

The site is designated as Green Belt as defined on the Bolton Allocations Map (2014). There is an existing single storey dwelling with a pitched roof situated on the site which was originally a games room/summer house for 692, Chorley Road.

Planning Permission was granted on appeal by the Planning Inspectorate on 4 June 2008 to allow the change of use of the outbuilding to a 3-bed dwelling subject to conditions, which removed the permitted development rights from the property.

There is an existing unadopted vehicular access into the site from Chorley Road situated between No's 682 and 684, which also provides access to the rear garage court which is located at the rear of 660 – 682 Chorley Road. The site is located on an incline which slopes down in a northerly direction. A 2-metre-high timber boundary fence surrounds the perimeter of the site which screens views into the site from outside. A public right of way also runs down the rear boundary of site between the fence line and the adjoining field.

The land to the north and east of the site is open countryside, with ribbon development of residential properties fronting onto Chorley Road on the south side. To the west is commercial development consisting of a hotel, health club and associated car parking.

3. Planning History

66692/04 – CERTIFICATE OF LAWFULNESS FOR THE USE OF LAND AS GARDEN STATUS. – Granted 27/02/2004

2895/05 | CERTIFICATE OF LAWFULNESS FOR THE PROPOSED ERECTION OF A SUMMER HOUSE/RECREATION FACILITIES – Granted 21/02/2006

78640/07 - CHANGE OF USE OF DETACHED SUMMER HOUSE/GAMES ROOM INTO ONE DETACHED DWELLING – Refused 14/12/2007

APP/N4205/A/08/2062347/WF – CHANGE OF USE OF DETACHED SUMMER HOUSE/GAMES ROOM TO THREE BED DWELLING – Allowed 4/06/2008 subject to conditions

Condition 2 and 3 attached to this decision are the salient conditions in relation to this current application and reads as follows: -

“Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that order), no extensions, porches, garages or outbuildings shall be erected within the curtilage of the dwelling house hereby approved.”

“Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that order), no rooflights/dormer windows shall be formed or any alteration or addition made to the roof of the dwelling house hereby approved.”

08565/20 – ERECTION OF TWO STABLES AND A TACK ROOM – Refused 08/09/2020

4. National Planning Policy

National Planning Policy Framework

The imposition of conditions 2 and 3 is now considered to be contrary to the national planning policy and in the following section we will set out the rationale for this reaching this view.

In the first instance it is necessary to consider the national planning policy context which is the **National Planning Policy Framework (NPPF) Dec 2023**. The NPPF is clear that Planning Permission should be granted for development where it accords with planning policy. The National Planning Policy Framework in **Paragraph 11** makes it clear that a presumption in favour of sustainable development is at the heart of national planning policy and where a proposal accords with planning policy then it should be permitted without delay.

Further attention is drawn to **Paragraph 38** of the NPPF which encourages local planning authorities to approach decision-taking in a positive way by looking for solutions rather than problems. Decision-takers at every level should seek to approve applications by using the full range of planning tools available to them and working proactively with applicants.

Paragraphs 53 and 54 make clear the Government's stance in relation to the removal of national prescribed permitted development rights using tools such as article 4 directions or conditions. The stance of the Government in respect of permitted development rights is that they should not be removed unless there is clear justification and this does not extend to a blanket removal of such rights in the Green Belt. Indeed, **paragraph 53** further states that in all cases, any decision to remove such rights should be based on robust evidence and apply to the smallest geographical area possible.

When planning permission was granted on appeal in 2008, the planning policy landscape was very different to the much more permissive NPPF under which the planning system operates today and it is submitted that the condition removing permitted development rights from this dwelling is now contrary to National Planning Policy Framework and in particular **paragraph 54**.

It is also worth noting that since 2013, the Government has dramatically expanded the breadth of development which can be undertaken without the need to seek planning permission. This is part of a concerted strategy of deregulation on the part of the Government to remove controls over what householders can and cannot do to their properties to encourage property

owners to invest in their homes without being weighed down by local bureaucracy.

Further **Paragraph 56** makes it clear that planning conditions should be kept to a minimum and only imposed where necessary. It is submitted that in this case the inspector at the time considered it necessary to exercise control over the site given the chequered history of the previous owner, however the intention was to manage further development rather than restrict it completely. Since the time of the decision, the Government's whole approach to planning has changed and we have seen a concerted effort since 2013 to deregulate the planning system to provide both householders and developers with greater control over what they can do utilising permitted development. This has gone hand in hand with a loosening of controls exerted by local planning authorities through the planning system.

The Government has consistently advocated the importance of the planning system in delivering economic growth and major investment, whilst at the same time decrying the fact that local planning authority resources are far too often deployed dealing with minor development which does not deliver significant economic benefits.

Whilst, the Section 13 of the NPPF states that disproportionate additions in dwellings in the Green Belt should be resisted, it does not advocate that permitted development rights should be removed in the Green Belt. It is therefore considered that the NPPF does not offer any policy basis or justification in this instance for the removal of permitted development from dwellings in the Green Belt.

National Planning Policy Guidance

In the Use of Conditions section, the NPPG contains the following exerts

Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and

6. reasonable in all other respects.

Conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#), so that it is clear exactly which rights have been limited or withdrawn. Area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.

5. Local Planning Policy

Bolton Allocations Plan (December 2014)

Policy CG7AP – relates to the Green Belt and states the Council will not permit inappropriate development in the Green Belt. Inappropriate development includes any development which does not maintain the openness of land or which conflicts with the purposes of including land within the Green Belt, and the erection of new buildings except for 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.

The first iteration of the NPPF was published in March 2012, it has since been revised in 2018, 2019, 2021 and twice in 2023. Whilst, the local plan policy is generally consistent with the Section 13 of the NPPF, we have seen a significant shift in Government policy over the intervening years. The government has sought to consistently reduce the controls local planning authorities exert over householders' ability to invest in their properties by extending and increasing permitted development rights over a sustained period of time. With this in mind it is clear that the conditions 2 and 3 imposed on appeal are no longer consistent with the direct of travel of Government policy nor the current NPPF.

6. Analysis

The main issue is whether these two conditions imposed in June 2008, by a planning inspector are now contrary to the National Planning Policy Framework (December 2023) and in particular paragraph 54 which specifically states 'planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.'

The inspector in granting consent for the conversion of the summer house/games room in 2008, removed permitted developments to allow the local planning authority to exercise a greater degree of control rather than prevent future development on the site. With the relaxation of permitted development rights in the intervening period the inspector obviously had the foresight to seek to prevent some of the excesses allowed utilising permitted development and provide the local planning authority with additional controls over future development on the site. However, the draconian approach means that the applicant cannot even erect a small garden shed or add a rooflight without the need for planning permission and it surely cannot have been the intention of the inspector to prevent such minor household development altogether.

That said, it is considered that it was not the intention to prevent all future development on the site, but to put a mechanism in place to allow the Council to review its appropriateness, having regard to the Green Belt location of the property as well as future planning policy changes such as the introduction of the NPPF. There have been no additional structures added to the property since 2008, so the dwelling and curtilage remain intact as approved and in compliance with the conditions imposed on the planning permission.

Clearly, since the appeal was allowed the planning policy landscape has changed significantly and there has been a drive towards deregulation and an empowerment of homeowners to be able to invest in their homes without interference. This has resulted in a wide range of new permitted development rights being added to statute and no restriction on these in relation to the Green Belt exists therefore it is clear that the Government saw no reason to place a wholesale restriction on PD rights in the Green Belt and this is further borne out by the NPPF and NPPG.

Attention is drawn to paragraph 8 of the inspector's decision letter (APP/W0530/W/21/3272766) where it states *'I find it reasonable to conclude that had it been the intention of Government to limit permitted development rights in the Green Belt, it would have done so. It therefore follows that the*

permitted development rights for a dwelling in the Green Belt does not harm openness and is not disproportionate in the first instance.'

He continues at paragraph 9 by quoting directly from the NPPG "*conditions restricting the future use of the permitted development rights...may not pass the test of reasonableness or necessity...area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.*"

At paragraph 10 the inspector then states '*In my view, the Framework and GPDO start with the presumption that a new dwelling in the Green Belt should be allowed to enjoy its permitted development rights. It is then for the decision maker to assess and explain why an individual class or classes within the relevant parts of the GPDO would harm openness in a specific case, necessary to justify the need for a restrictive condition. The Council's blanket ban approach on fear of what might happen is not an adequate assessment of the harm, is inconsistent with national policy and guidance, and accordingly is not a sufficient reason to remove permitted development rights.'*

Clearly, the blanket removal of permitted development rights by the inspector dealing with the conversion (APP/N4205/A/08/2062347/WF) was several years before the NPPF was produced and since then policy has moved on to be more permissive than in the past and this is clearly reflected in the inspectors' views above.

In appeal decision APP/D3640/D/23/3326226 the inspector at paragraph 6 emphasises paragraph 54 of the framework and paragraph 21a-017-20190732 of the NPPG. The decision also references at paragraph 7 that whilst PD rights are restricted within AONB's, the Broads, National Parks, World Heritage Sites and Conservation Areas no such restrictions apply to the Green Belt.

At paragraph 13 of the decision letter the inspector states "I find that there is not clear justification for the imposition of condition No. 4 on proper planning grounds related to the avoidance of inappropriate development in the Green Belt and that the condition fails the tests of necessity and reasonableness."

Attention is also drawn to a further appeal decision APP/Z4718/W/23/3322018 where the LPA sought to control future development in the Green Belt and the inspector found this was incompatible with Government advice and award costs against the local planning authority.

7. Conclusions

It is considered that the reason for the removal of PD rights in this instance has now been superseded by a change in national policy and introduction of the NPPF which frowns on the removal of such rights unless there is clear justification. It is submitted that in this particular case that no clear justification can be demonstrated to exist as recent appeal decisions have consistently shown that the removal of PD rights due to Green Belt location is not justification in itself.

That said it was clearly the intention of the planning inspector in arriving at his decision to allow the change of use subject to conditions to allow the Local Planning Authority to exercise a degree of control over some of the excesses allowed under permitted development so that it could prevent harm to the openness of the Green Belt from disproportionate additions/extensions to the original dwelling. However, whilst this may have been in line with planning policy at the time of the decision it is quite clear from recent appeal decisions that such an approach is now contrary to national planning policy and is outdated.

These two conditions together remove permitted development rights under Class A, B, C, D and E of the Town and Country Planning (General Permitted Development) Order 1995 (As Amended) which means that applicant requires planning permission to install a rooflight whilst a neighbour situated next door in the Green Belt could erect a full width rear extension projecting 8 metres out under permitted development rights utilising the Prior Approval process or add an extra storey or two to their existing dwelling using the same mechanism. Clearly, this does not seem either consistent or fair when considered in this context and it is therefore difficult to see any justification for keeping these unnecessarily restrictive conditions in place in the current climate.

Having regard to the above, it is considered that the removal of conditions 2 and 3 is consistent with the approach advocated by paragraph 54 of the NPPF or the NPPG and the general direction of travel in relation to the deregulation of householder development in the planning system advocated by the Government. Therefore, it is respectfully requested that conditions 2 and 3 should be removed from the planning permission for this development.

Appendices

Appendix A. APP/D3640/D/23/3326226 - Mulberry House, Bagshot Road, West End, WOKING, GU24

Appendix B. APP/W0530/W/21/3272766 - Church View, Newmarket Road, Stow-Cum-Quy, CB25 9AQ

Appendix C. APP/Z4718/W/23/3322018 - Land and building off (formerly part of Beaconsfield Farm), Paul Lane, Flockton Moor, Huddersfield WF4 4BP.

Appendix D. APP/Z4718/W/23/3322018 - Land and building off (formerly part of Beaconsfield Farm), Paul Lane, Flockton Moor, Huddersfield WF4 4BP. (Costs Award)

Appendix E. Appeal Ref: APP/G5180/W/22/3312414 Five Oaks Stables, Layhams Road, Keston BR2 6AR