



Application to remove condition No. 4
(removal of Permitted Development Rights) of
planning permission 2012/0144

Martins Nest Farm, Grime Lane, Hepworth,
Holmfirth, HD9 7TG

Planning Statement

April 2019

Application to remove condition No. 4 (Removal of Permitted Development Rights) of planning permission 2012/0144

Property: Martins Nest Farm, Grime Lane, Hepworth, Holmfirth, HD9 7TG

Applicant: Mr Turner

Introduction

- 1.1 I am instructed by Mr Turner who resides at Martins Nest Farm, Grime Lane, Hepworth, Holmfirth, HD9 7TG ("the Property"). The Property is a modest detached farm workers dwelling located within the Green Belt.
- 1.2 Planning permission was granted on 12th June 2012 for the erection of a moderate 150 sq.m of floor space 3 bedroom farm workers dwelling and the formation of 2 no. associated car parking spaces at Martins Nest Farm, Grime Lane, Hepworth, Holmfirth, HD9 7TG (planning ref: 2012/0144).
- 1.3 The 2012 planning permission was granted subject to various conditions. Condition 4 removed permitted development rights from the property and states:

"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008 (or any Order revoking or re-enacting that Order with or without modification), no enlargement, improvement or other alteration of the dwellings which would otherwise be permitted by Part 1 of Schedule 2 to that Order shall be carried out without the prior written consent of the Local Planning Authority, and no garages or other outbuildings shall be erected."

- 1.4 The reason for the condition is set out within the decision notice and is:

"Reason: To safeguard the openness and visual amenities of the Green Belt in accordance with Core Strategy Policy CSP 34, Protection of Green Belt"

- 1.5 Martin Nest farm extends to some 100 hectares and includes two intensive livestock enterprises. The farm is very exposed and very windy.
- 1.6 The dwelling was erected as a farm workers dwelling and there is a condition on the planning permission ensuring that the property remains as a farm workers dwelling. The applicant is a farm worker and resides in the Property and works on the farm.
- 1.7 The applicant has a growing family with two children under the age of two. The applicant is on call 24 hours a day so he is physically tied to living in this

dwelling. It is wholly unjustified to remove the applicants permitted development rights which allow alterations to dwellings.

- 1.8 The day to day farming at Martins nest is performed by the applicants father Mr. Turner, the applicant, the applicants mother and his brother. This is a highly successful farming enterprise run by the family.

2. National Planning Policy Framework (“NPPF”)

- 2.1 The National Planning Policy Framework was amended and re-published in February 2019.

- 2.2 Paragraph 53 of the NPPF is concerned with the removal of permitted development rights and provides:

“The use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities). Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.”

- 2.3 Paragraph 55 of the NPPF is concerned with the use of planning conditions and provides:

“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...”

- 2.4 The imposition of condition 4 on permission 2012/0144 was not based on any clear justification. The officers report makes reference to openness of the Green Belt but accepts that the farm workers dwelling would not prejudice openness and visual amenity in the Green Belt, further the officers report makes reference to the dwelling remaining affordable for agricultural workers. However, no justification as to why removal of all permitted development rights would achieve this. As set out above the permission is granted subject to a standard agricultural tie to ensure that the Property remains available for agricultural workers.

- 2.5 Furthermore, the condition was not necessary to make the development acceptable in planning terms, the condition restricting the dwelling to those employed in agriculture is what was necessary as it was to be farmworkers dwelling, and it does not fairly and reasonably relate in scale and kind to the development given that the approved dwelling was not considered to of a size which would prejudice the openness and visual amenity of the Green Belt, as

confirmed in the Officers report. Therefore, there was no justification for the condition.

National Planning Practice Guidance (“NPPG”)

- 2.6 The NPPG provides more detailed guidance on the use of planning conditions. Paragraph 1 of the NPPG states:

“Why are conditions imposed on a planning permission?”

When used properly, conditions can enhance the quality of development and enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of the development. The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable. It is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls.”

- 2.7 It is our belief that the condition was placed on the grant of Planning Permission simply as the Property is located within the Green Belt and it is standard practice within Barnsley to remove Permitted Development rights where planning permission is granted within the Green Belt. This is not in accordance with the NPPG.

- 2.8 Paragraph 17 of the National Planning Practice Guidance states:

“Conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. 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. The local planning authority also has powers under article 4 of the Town and

Country Planning (General Permitted Development) (England) Order 2015 to enable them to withdraw permitted development rights across a defined area”.

- 2.9 The blanket removal of all permitted development rights contained within Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 is totally contrary to the NPPG.

3. Case Law

- 3.1 In the case of **Orchard Cottage** (24 May 2017 APP/H1515/W/16/3165798) outline planning permission had been granted in 1977 for a horticultural workers bungalow. In addition to an agricultural occupancy condition the permission was subject to a permission which limited the dwelling to single storey construction only providing a maximum of 900 sq ft of living accommodation. The reserved matters approval in 1978 then added a further rider that no further extensions should be allowed under the Town and Country (General Development Order) 1977 be permitted without the prior consent of the council. Extensions were carried out in 1982 and 1984 but more recently the Appellant wished to extend further and so applied for a Certificate of Lawfulness for a single storey extension and rear dormer, which was refused by the Council on 3 June 2016.
- 3.2 The Appellant then applied for the removal of the condition which had been attached to the reserved matters approval which the Council granted but it applied a condition which removed permitted development rights under classes A, B and D of Part 1, Schedule 2. The reason given for this condition was “to prevent the creation of a dwelling of disproportionate size that would conflict with the policies of restraint within the Green Belt”.
- 3.3 The Inspector found that although the application related to an historic approval, the condition now applied should have been assessed against current policy and guidance. The tests for the imposition of planning conditions, as set out in para 206 of the previous version of the NPPF (repeated within the current NPPF), are that conditions must be necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects.
- 3.4 The Inspector determined that the original condition that had been applied would now be contrary to PPG advice and would be unreasonable. He stated that national and local Green Belt policy requires no justification for the condition that had been imposed. The Council had failed to apply the tests of necessity and reasonableness and the condition was removed.
- 3.5 In the case of **Sutton Orchard Cottage** (15 February 2002 – APP/TO355/A/01/1071185) planning permission had been granted in 1991 for

a replacement bungalow which had a floorspace 63% greater than the existing bungalow. As it was not practicable for the owner to erect the replacement dwelling immediately they built a detached studio and store as permitted development in relation to the existing dwelling. The condition applied to the permission for the replacement dwelling required the removal of the dwelling and garage but did not refer to the outbuildings. The detached studio and store was therefore attached to the replacement dwelling. Part of the former dwelling had also been retained and was now used as habitable space.

- 3.6 The grant of the permission for the replacement dwelling had removed PD rights in relation to the curtilage near the dwelling in the eastern part of the Appellants' land. The land to the west therefore had PD rights. In 2000 an application was made for a garage and covered link to the existing dwelling. The Council included all buildings permitted or existing prior to the development of the replacement dwelling on the appeal site as additions to the original dwelling and therefore concluded that the proposed garage and link would result in disproportionate additions. The project would therefore be inappropriate development in the Green Belt for which very special circumstances had to be found.
- 3.7 The Council was satisfied that the removal of PD rights over the substantial curtilage would provide very special circumstances to outweigh the presumption against inappropriate development. Therefore a condition was attached to the planning permission to remove PD rights under Classes A, B and E of Schedule 2, Part 1 of the TCPA 1990.
- 3.8 The Inspector stated that, *"The appeal site is not, in my opinion, land that should be retained in order to preserve the form of development or to prevent over-development. It is land where the GPDO advice in 1995 indicates that there should be no greater restriction than would be applicable to the curtilage of the majority of residential properties and generally applies to residential land within Green Belts"*.
- 3.9 The Inspector noted that the proposed development would increase the area covered by buildings by 36sqm but, with the covered link, the area under the proposed roof would be 63sqm. He considered that the scale of the area from which PD rights would be removed by the condition would not fairly and reasonably relate to the scale of the development permitted, but rather to the scale of the curtilage. The Inspector concluded that the condition was not relevant or related to the scale of the development permitted. In addition, he did not think that the project would result in disproportionate additions and therefore the condition was unnecessary.

- 3.10 In the case of **Brambleberry Farmhouse** (17th July 2014 – APP/Q5300/A/14/2217664), the site was on the edge of the open countryside, but largely visually self-contained. An application sought planning permission for the construction of a new house to replace the existing mobile home, without complying with a condition attached to a 1990 permission which removed PD rights. The Council considered that to allow the erection of extensions to the dwelling and the erection of outbuildings within its curtilage could result in overly dominant and obtrusive structural forms in the Green Belt.
- 3.11 The Inspector noted, that whilst the NPPF is silent on this matter, PD is development for which the principle has already been granted by secondary legislation, and there are no restrictions within the GPDO upon development within the curtilage of a dwellinghouse which is located within the Green Belt. Whilst he noted that potentially, PD on the site could give rise to disproportionate additions over and above the size of the building, he had not received any evidence that this would actually be the case. In addition, whilst in any location it is possible that an individual may seek to cover up to 50% of their curtilage with built development, in reality this is unlikely as they must all be required for purposes which are genuinely incidental to the enjoyment of the dwellinghouse.
- 3.12 The Inspector noted that para 17 of the PPG states that conditions restricting the future use of PD rights will rarely pass the test of necessity and should only be used in exceptional circumstances. It also states that blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. For these reasons, in light of the Government's growth agenda and in the absence of Government advice to restrict PD rights within the Green Belt, he found that there were no exceptional circumstances to justify the continued prohibition of PD rights at the appeal site. As such it was found that neither of the conditions was reasonable or necessary. As the site is largely self-contained and the majority of increased floor area resulting from PD works would be limited to single storey built forms, he considered the openness, character and appearance of the Green Belt would not be materially harmed.
- 3.13 In **Honey Lane Farm** (17th January 2017 – APP/T0355/W/16/3156065) planning permission had been granted for a single storey rear extension in 2016 subject to the imposition of a condition which removed PD rights under classes A, B and E, meaning permission would be required for extensions and curtilage outbuildings that could otherwise be constructed under PD rights.
- 3.14 The Inspector noted that para 206 of the NPPF states that planning conditions should not be used to restrict national permitted development rights unless

there is a clear justification to do so. The Government's PPG advises that conditions restricting the future use of PD rights will rarely pass the test of necessity and should only be used in exceptional circumstances.

- 3.15 The Council had imposed the condition as the site was located in the Green Belt and it felt that whilst the approved single storey extension complied with policy, any further development as unlikely to do so. Whilst noting the concern, the Inspector stated that the dwelling house enjoys PD rights and exceptional circumstances did not exist to justify their removal. He also took into account the fact that householder PD rights had been framed by the Government to allow householders to improve and extend their homes without the need to seek a specific planning permission. Although the removal of the condition could result in development contrary to policies seeking to protect the Green Belt, any harm that may result would be outweighed by the other considerations and he determined that exceptional circumstances did not exist to justify the removal of PD rights and as such the condition was not reasonable or necessary.
- 3.16 In *Elmtrees* (17th February 2016 – APP/M2270/W/15/3137428) planning permission had been granted in 2015 for demolition of existing bungalow and the erection of a replacement dwellinghouse. This was subject to a condition which removed PD rights. The Appellant in this case sought to amend the permission by removing reference to the PD rights. The Council argued that it was necessary and reasonable to preclude PD rights under classes A, B and E because any further development would harm the visual amenities of the locality. The Appellant argued that the removal of PD rights is unjustified under Class E and wanted a new permission which only removed PD rights under Classes A and B.
- 3.17 The Inspector noted that the permission had already been implemented, with building works well under way. However, he also noted that the site was not within a designated landscape area and that he had not seen any evidence suggesting significant planning constraints to development on the site. He acknowledged that the site was beyond the settlement boundary but said he hadn't seen anything to indicate that development granted by Class E must be restricted on the site due to its unusual setting or location. In his assessment, development within the curtilage of the new dwelling would not over develop the plot or harm the area's amenities. There was no evidence to indicate that further Class E development would harm the character of the rural landscape.
- 3.18 Having regard to current Government planning policy about the removal of PD rights gifted to citizens by Parliament by conditions, he found no exceptional circumstances justifying the removal of Class E PD rights in this case and removed the condition in relation to Class E.

- 3.19 In **Wakefield (24th July 2018 - APP/X4725/D/18/3201609)** planning permission had been granted in 2010 for extensions to a dwelling in the Green Belt and a condition had been applied to remove permitted development rights as this may lead to unacceptable additions to a dwelling in the Green Belt above those approved as part of the application. The Applicant argued that such a condition was not reasonable nor necessary and the Inspector agreed. The Inspector found:

“The PPG makes it clear that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances...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.

For these reasons, I conclude on the main issue that condition No 2 was neither reasonable nor necessary to render the original act of development acceptable and I shall therefore omit it.”

4. Conclusion

- 4.1 It is therefore clear that national planning policy and guidance both state that conditions restricting the use of PD rights will rarely pass the test of necessity and reasonableness.
- 4.2 The Government has clearly chosen not to restrict PD rights in the Green Belt and therefore it will require exceptional circumstances to justify the imposition, or continued application of a condition which takes away these rights.
- 4.3 As the case law shows, these special circumstances to justify the retention of a prohibition on PD rights will usually only be seen if there would be obvious harm to the neighbours' amenity, the Green Belt or the open character of the area.
- 4.4 In relation to residential amenity the case officer confirmed within the officers report:

“The site is situated approximately 80m from the nearest residential property, Martin's Nest Cottage. It is not felt that there will be any significant impact upon the amenity of this property by way of disturbance or overlooking.”

- 4.5 In relation to the openness of the Green Belt the case officer reached the following overall conclusion:

“The proposed dwelling is considered to be a size which is acceptable and would not prejudice the openness and visual amenity of the Green Belt in accord with Policy CSP 29 and CSP 34 of the submissions version of the Core Strategy..”

- 4.6 The location of the Property and the fact that it is a moderate farm workers dwelling does not indicate that permitted development rights should be limited. There is no justification for the imposition of greater restrictions than would be applicable to the curtilage of other properties.
- 4.7 No exceptional circumstances existed at the time that the application was determined to justify the blanket removal of residential permitted development rights and nor do they exist now to justify the imposition of this condition.
- 4.8 We therefore do not consider that the condition is reasonable or necessary and should not continue to apply in accordance with the NPPF and NPPG. As such we respectfully request that condition 4 on planning permission 2012/0144 is removed.

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IOP Consulting