

PLANNING SUPPORTING STATEMENT

20 MILL RACE DRIVE, GOLDTHORPE

**PROPOSED EXTENSION TO DWELLING (RETROSPECTIVE) AND CHANGE OF USE OF LAND
ADJOINING PROPERTY TO RESIDENTIAL CURTILAGE**

Our Ref: AAH/1009/10PLA

September 2010

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1.0 Introduction

- 1.1 This Statement sets out our analysis of the relevant planning policy principles and legal framework which need to be considered in support of this application for the retrospective extension to the side of 20 Mill Race Drive and the associated change of use of land outside of the residential curtilage to residential curtilage.
- 1.2 This application follows an earlier extension which was approved in 2007 by the Local Planning Authority and has since been built. However the Council have considered that this approval is not valid as the extension encroaches onto Council owned land. This was indicated as being the case in the 2007 application however it was not evident that this was Council owned land at the time and was included as land owned by the applicant with the application submitted with a Certificate A: signed by the applicant stating that up to 21 days prior to the submission of the application the applicant was the owner of the land. On this basis the Local Planning Authority has determined that a fresh application is now required for consideration and to regularise the retrospective extension and the change of use of the land to residential curtilage. The Council has agreed to sell this land to the applicants for £9,000 and a requirement of this sale is the submission of a planning application to regularise the matter.
- 1.3 The development proposal involves the extension of the existing dwelling to the side by approximately 6.5 metres by 6.8 metres. The extension is set back from the front building line and is two storey in scale yet stepped down from the ridgeline of the original dwelling. Matching materials have been incorporated to ensure it appears compatible with the original dwelling.
- 1.4 The proposed development would be located in Mill Race Drive where the principle of extensions and alterations to residential development is considered acceptable nevertheless it is appreciated that this application raises certain planning policy issues particularly in relation to the change of use and these are considered within this report in relation to local and national planning guidance alongside relevant planning case law.

2.0 The Site Details

- 2.1 The site in general is characterised by its residential surroundings with dwellings dominating the street scene interspersed with garden settings. The surrounding estate is a typical modern housing estate with little architectural merit. There are a range of property styles within the estate including bungalows, detached and semi-detached properties.
- 2.2 The application site is located at the end of the cul-de-sac known as Mill Race Drive and sits angled facing south east with its rear elevation facing the north west. To the rear of the site lies a bank of trees and a disused railway line approximately 50 metres in width which acts as a strong visual barrier to the housing estate and runs along the length of the estate in a general north south direction. An access route runs through this bank of trees which is a reasonable depth and provides a strong visual barrier to the commercial activities to the west.
- 2.3 Goldthorpe is a modest sized town located between Barnsley and Doncaster. The town has excellent transport connections both in terms of the roading network and the public transport availability with the railway station and bus routes.
- 2.4 The site is not located within a Conservation Area and does not form the setting of a listed building.

3.0 Planning Policy

3.1 Planning applications must be determined in accordance with the statutory Development Plan, unless material considerations indicate otherwise. If the Development Plan contains material policies or proposals and there are no other material considerations, the application should be determined in accordance with the Development Plan. Where there are other material considerations, the Development Plan should be the starting point, and other material considerations should be taken into account in reaching a decision. One such consideration is whether the plan policies are relevant and up to date. The Act provides that if there is a conflict between policies in an adopted Regional Spatial Strategy or policies in a Development Plan Document, the most recent policy will take precedence.

3.2 The Government's statements of planning policy are material considerations which must be taken into account, where relevant, in determining planning applications. These statements cannot make irrelevant any matter which is a material consideration in a particular case, but where such statements indicate the weight that should be given to relevant considerations, decision makers must have proper regard to them. The following national policy guidance/statements are relevant in considering this application :

- Planning Policy Statement 1 : Delivering Sustainable Development
- Planning Policy Statement 3 : Housing

3.3 PPS1: Delivering Sustainable Development is of relevance in general. This identifies that good design is integral to good planning, and that the relationship of the development to the wider surroundings is an important planning consideration. In this respect site selection of a suitable location for the proposed development and the design and site selection has been critical taking into account the context of PPS1.

3.4 PPS 3 - Housing provides the context for planning for housing through development plans and planning decisions. PPS3 places emphasis on providing housing in suitable locations, close to jobs, key services and infrastructure. PPS3 also refers to the need to make the most efficient use of land. The specific outcomes that the planning system should deliver are:

- High quality housing that is well-designed and built to a high standard.

- A mix of housing, both market and affordable, particularly in terms of tenure and price, to support a wide variety of households in all areas, both urban and rural.
- A sufficient quantity of housing taking into account need and demand and seeking to improve choice.
- Housing developments in suitable locations, which offer a good range of community facilities and with good access to jobs, key services and infrastructure.
- A flexible, responsive supply of land – managed in a way that makes efficient and effective use of land, including re-use of previously-developed land, where appropriate.

3.5 In summary, the policies cited from the Unitary Development Plan allow for provision of this type of development subject to compliance with certain criteria. Relevant policies to the assessment of this application include:

Policy H8E - Extensions to Dwellings

Proposals to extend dwellings should :

- A) Be of a scale and design which harmonises with the existing building
- B) Not adversely affect the amenity of neighbouring properties
- C) Maintain the character of the street scene, and
- D) Not interfere with highway safety.

3.6 This policy applies to extensions to dwellings which require planning permission. Further guidance on proposals to extend dwellings is included in Supplementary Planning Guidance. As the proposal involves a change of use of land to residential curtilage which potentially affects the bank of trees and routeway which make up the disused railway line consideration must also be given to the following policy:

Policy GS26 - Recreational Routeways & Networks

The council will develop and promote a network of safe Multi-user recreational routeways, including the trans Pennine trail. In addition, the council will seek to extend the Network of public rights of way wherever possible, Connecting new footpaths and

bridleways to the existing System. The multi-user network and extensions to the existing footpath and bridleway system will be developed as resources permit with particular emphasis being placed on :

A) Maximising the use of disused railways and any existing lengths

Of redundant canal

B) Links to neighbouring authorities

C) Routes between settlements and into rural areas

D) Opportunities arising from highway improvement schemes.

3.7 The past planning history of the site in terms of the ownership of the land is somewhat irrelevant and regard should be given to material planning considerations only and how these inter play with planning policies. It is considered that this application complies with the above mentioned policies and guidance as the proposed development would be sensitively undertaken in a manner which would compliment the existing housing stock and character of the area. Furthermore its location and nature is such that a sustainable form of development can be achieved whilst respecting the amenity of the general area including the use and appreciation of the disused railway line to the rear.

4.0 Planning History

- 4.1 The site currently forms 20 Mill Race Drive, Goldthorpe and given the background to this application is considered appropriate to have regard to the planning history associated with the extension. The extension has been built with work commencing in 2007 and completed in 2009.
- 4.2 In April 2002, Mrs Devine purchased 20 Mill Race Drive and moved into the property on the 19th April 2002. Upon moving into 20 Mill Race Drive in 2002, it was noted that there was a wire fence which ran along the rear of the property at the back of the wire fence was waste land. In May 2002, Mrs Devine telephoned Barnsley Metropolitan Borough Council, British Rail, Yorkshire Water, NCB and the Land Registry to ascertain who owned the land because she was receiving bad television reception due to the overgrowth of trees. Barnsley Metropolitan Borough Council stated that the land at the back of the house was nothing to do with them and they were to contact British Rail because it was an railway embankment and not Council owned. Mrs Devine therefore contacted British Rail who said it may belong to the NCB and the NCB confirmed that they owned the dismantled rail track which was used to navigate coal by track to other collieries but the embankment was not on any of their Deeds. Mrs Devine explained that she tried to find out exactly who owned the land by using the Land Registry who again, did not have any records.
- 4.3 Mr and Mrs Devine maintained the trees from May 2002 to get a television reception and overgrowth of trees/brambles encroaching onto her house at a considerable cost. In summer 2003, Mrs Devine contacted the Council due to the tree branches overhanging onto her roof and pushing the shed in to collapse. Again, Barnsley Metropolitan Borough Council refuted responsibility of ownership of the land. After Mrs Devine spoke to a neighbour about it, the neighbour said that the previous owner to number 20 Mill Race Drive had to ask British Rail to put the shed up. On contacting British Rail, Mrs Devine was advised that they were not the owners. Mrs Devine therefore had to have the tree branches cut back again at a cost to herself.

- 4.4 In Autumn 2003 Mrs Devine contacted all parties again about the banking because of the landslide due to bad weather. Mrs Devine had to pay to have a retaining wall built at the back to prevent further landslides.
- 4.5 It should be noted that at this stage, Mrs Devine had problems in summer 2002, autumn 2002 and various occasions throughout 2003 to 2004 with regards to intruders, fly tipping, nuisance and noise. The police were called on each occasion. In early 2004, a fence was erected which was larger and stronger and at least one foot in front of the wire fence that was in situ.
- 4.6 In 2005, Mr and Mrs Devine had to pay to remove soil that had slid down to the front of the property and make the wall secure. Again they were maintaining all trees and overgrowth.
- 4.7 In 2006, Mr and Mrs Devine made an application for Planning Permission for an erection of a side two storey and rear conservatory extension to 20 Mill Race Drive, Goldthorpe. Planning Permission was granted and Mr and Mrs Devine had the work carried out.
- 4.8 The Building Control Officer, Paul Catling instructed the applicants to remove two large trees before any further work commenced as they were deemed dangerous and the roots could possibly cause future problems with foundations of the new build as well as the existing house. Asking if they would need permission, the Barnsley Building Control Officer replied that it was not necessary and it was not Council owned land.
- 4.9 In August 2007, Mr and Mrs Devine made an application for Planning Permission (Ref: 2007/1357) for an erection of a side two storey extension to 20 Mill Race Drive, Goldthorpe. Planning Permission was granted on the 17th September 2007 and Mr and Mrs Devine had the work carried out. Certificate A was signed by the applicants at this time due to the past history of the site through which they were under the impression that they were the owners of the land. The Council granted consent on this basis however have since raised the question over ownership and have now questioned the validity of this planning application in light of this.

5.0 Consideration

5.1 In this part of the statement, the proposed development will be considered against local and national planning policy and guidance and relevant material planning considerations will be considered sequentially as part of this report.

The validity of the 2007 planning consent as a material planning consideration

5.2 It has been raised that the 2007 planning consent for the extension is questionable due to the inaccuracies of the Certificate A ownership certificate which was completed with the applicants stating full ownership. A planning application is not valid unless it is accompanied by a certificate which ensures that the owners of land, tenants with at least 7 years to run, and all agricultural tenants are informed that a planning application is being made.

5.3 The court case *Sidney Hackett v S.O.S.* 12/5/94 showed that a landowners objection is a material consideration, but that an inspector may reject this as not being a planning matter. While an applicant for planning permission need not be the owner of the land subject of a planning application, and the consent of whomsoever does hold an interest in the land is not required, applicants for planning permission are legally obliged to notify, under section 66 of the Act.

5.4 Applications may not be determined until 21 days after the date of service of any notice or the carrying out of advertising under this provision, which is contained in section 66 of the 1990 Act, but different requirements with respect to minerals applications are found in section 67.

5.5 Whilst it is clear from section 66 that a local authority shall not entertain an application with no certificate, the status of a decision made where it later becomes clear that there has been some irregularity continues to create some difficulty. In *R v Bradford-on-Avon U. D.C.* 1964 it

was held that a factual error in a certificate did not deprive a local authority of jurisdiction, but this judgement was modified by *Main v Swansea City Council* 1984 which held that the nature of the irregularity was important. It was stated that when the *vires* of a decision made with irregularities in ownership certificates the court should have regard to matters such as the identity of the applicant for relief, the lapse of time and the effect on other parties and the public. The following court and appeal cases offer an insight into how comparable cases to this 20 Mill Race Drive scenario have been considered.

- An inquiry was held into a proposal to erect a dwelling. At the opening of the inquiry the council lodged an objection to the appeal being heard on the grounds that incorrect certificates had been served. An inspector concluded that as the owner of the land attended the inquiry, he did not consider that his position or that of the council was affected by the errors in the certificates (Oxford City Council 14/6/91 DCS No.030-764-700).
- An office building was the subject of an appeal. Notice had not been served on the owners of part of the site and an objection was made that the planning application was invalid and that the S.O.S. was not entitled to entertain an appeal. The appellants pointed out that the aggrieved company had known about the development proposal a long time before and thus had adequate time to prepare a case of objection. An inspector agreed and considered that the owners of this land were not substantially prejudiced (East Hertfordshire D.C. 3/2/89 DCS No.051-946-287).
- Planning permission was given at appeal for a two storey side extension to a house, but there was a dispute over the boundary of the property with that of a neighbour. The neighbour sought to quash the decision on the basis of the validity of the certificate. The inspector recorded what he had been told of the certificate and distinguished it from his consideration of the planning issues. It was held that there had been no error of law. *Bryant v S.O.S. and Reigate & Banstead B.C.* 4/2/92.

5.6 The three cases outlined above all indicate the same themes running through that simply an error in completing the Certificate A does not in itself quash the validity of a decision. Consideration is given to whether following the submission of the application the owners of the land were prejudiced by being unaware of the proposals by the incorrect completion of the ownership certificate. If the owners were made aware of the application by another

means then the courts and appeals have given significant weight to this. Clearly in the case of 20 Mill Race Drive the very submission of the planning application to the Council resulted in the Council being made aware of the application and an opportunity presented itself to make representations in relation to the application.

- 5.7 It is thus concluded that the application for the two storey extension remains valid and does not require the specific formal consent of a further application. The change of use of the land to garden curtilage is different as this was never included on the earlier consent. This therefore does require the formal approval of a planning application and given the views of the Local Planning Authority regarding the extension this has been included again for completeness in order to regularise the works.
- 5.8 It should be noted at this point that ownership is not a material planning consideration in its own right and instead all applications must be treated on their own merits in relation to the environmental effects. Having already granted the extension recently and therefore accepted that the environmental effects from the extension are acceptable there would be no grounds for the reversal of this decision. The change of use of the land to the rear to garden curtilage must be considered on its own merits and is formerly assessed within this report.

Scale of the Development

- 5.9 Policy requires that the scale of the proposed development must be taken into consideration in relation to its surrounding context. "Small scale" developments are more acceptable, but there is no artificially imposed figure or limit to define "small scale", therefore it is best to address on the merits of any given situation whether a proposed development is of a suitable scale by having regard to other key issues, particularly its environmental impact.
- 5.10 The proposed development consists of a modest two storey extension which would remain subservient to the original dwelling and has already been accepted as being of an appropriate scale by virtue of the 2007 approval.
- 5.11 The change of use would see a shift in boundary only by approximately 3 metres along its rear length. There is no reason why a development of the scale as proposed given the surrounding density of the housing stock should not in principle, be regarded as "small scale" for policy purposes. Thus it is considered that the scale of the development for the

extension and change of use is considered appropriate in these circumstances and would in principle form a small scale development within the existing property and its curtilage.

Impact on the Character of the Area

- 5.12 The site lies within an existing residential area and thus any modest extension of these residential uses would accord with the general characteristics of the vicinity. In terms of the built form the area is characterized by a range of modern housing styles including bungalows, semi detached and detached dwellings. With this context of a variety of sized properties the proposals would appear wholly compatible with the existing character of the area. The design has stepped the extension back from the front building line and down from the ridgeline so that the extension remains subservient to the original dwelling and thus respecting its scale and form. This approach was deemed appropriate and accepted in the 2007 planning consent and the ownership issue has no bearing on this conclusion thus it follows that the same assessment should be made.
- 5.13 The change of use of the land bordering the north west boundary would not actually be appreciated by anyone else due to the depth of the trees and the disused railway line. Being to the rear of the property the change of use would be fully screened from the public vantage points along Mill Race Drive and would thus not alter this character. It is appreciated that from an aerial view the strong boundary line created by the railway line and its trees adjacent to the housing estate would be staggered at this point however this in itself would not be detrimental to the character of the area. From the railway line the change of use and the extension would be fully screened by the depth of trees and landform and would therefore not compromise the character or function of the recreational access facility or that is the railway line.
- 5.14 Based on the above assessment it is considered that the proposed development can be integrated into the built environment in a manner that compliments rather than detracts from the character of the area and would accord with the requirements of Policy GS26 and H8E of the Council's UDP.

Neighbour Amenity

- 5.15 Being within a residential area there are neighbouring properties within the vicinity and this application has been prepared in a manner which seeks to respect and maintain the amenity

enjoyed by the occupants of such properties. The nearest potentially affected neighbouring property is number 37 Mill Race Drive and the front elevation of the extension faces towards this property. However these windows face towards the side elevation and as such there would not be any impact in terms of overlooking. The extension is positioned approximately 12.5 metres from the side of this property and approximately 4 metres from the common boundary. It is positioned on the north side of this neighbouring property and as such there would be no impact in terms of over bearing, over dominating, loss of sun light or loss of day light. This relationship remains exactly the same as with the 2007 planning consent for the extension and was deemed acceptable at that time. The ownership issue has no bearing on this particular consideration and thus it must be concluded that the same assessment should be made that the extension has no adverse impact on neighbour amenity.

- 5.16 The change of use would result in no impact on neighbour amenity due to the limited nature of the change of use. There is no other neighbouring property likely to be affected by the proposals and as such there are considered to be reasonable grounds for the change of use to occur to the rear of this property.
- 5.17 With the above measures in place it is considered that the proposed development will not result in any overbearing impact, loss of direct sunlight, loss of privacy, undue noise or disturbance and thus the proposals would maintain the amenity of the occupants of the neighbouring properties.

Access and Transport Arrangements

- 5.18 Access to the site would be unchanged with access directly from the existing vehicular drive. Parking was originally provided in the way of off street parking and this is maintained. The extension provides a double garage which as a result improves the parking arrangements. The access and parking arrangements are considered suitable for the level of activity envisaged and therefore it is considered that no indiscriminate parking off site would be likely as a result of the development.
- 5.19 These access and parking arrangements remain exactly the same as with the 2007 planning consent for the extension and was deemed acceptable at that time. The ownership issue has no bearing on this particular consideration and thus it must be concluded that the same assessment should be made that the extension has no adverse impact on access and transportation arrangements.

- 5.20 Furthermore the change of use of the land to the rear to garden curtilage has no impact on the access arrangements of the property or indeed those associated with the disused railway line.
- 5.21 Based on the above it is considered that the proposed development would have appropriate access and transport connections and would not be prejudicial to highway safety.

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Ecology

- 5.21 The proposals would involve a change of use of land but does not seek consent to remove any vegetation as part of this change of use and as a result the trees, habitats and their associated ecological linkages would be preserved as part of this overall development.

Precedent

- 5.22 An analysis of the many court and appeal decisions which have debated this topic shows that fear of precedent creation is a material consideration to be given weight in the decision making process where it is being debated whether to grant permission contrary to established planning policy or principles. However, a distinction has to be made between cases where applications for the same type of development are likely to be made at other locations with similar circumstances which future decision makers could not resist in all fairness, and those where the site circumstances are sufficiently unique for the risk of parallel conditions to be small. If the particular planning policy, which it is feared would be breached by cumulative planning permissions admits some exception within a continuing overall locational or numerical restriction on development, the force of the precedent argument is reduced. In these cases it is a reasonable defence that each case should be treated on its merits in the light of the situation prevailing at the time of application.
- 5.23 There is no specific planning policy that would be breached by this change of use development however it is understood that the Council would not necessarily wish to see each and every property which borders the railway embankment encroach unless special circumstances existed that warranted this to occur.
- 5.24 There is an extant planning consent for the extension built here and the Council have already therefore accepted the extension's location in pure built form terms. This extension and its relationship to the railway embankment has thus been accepted in the past as being in line with planning policy and there have been no changes in planning policy which would warrant a reversal of this decision. Indeed in one appeal case costs were awarded to an appellant as a local authority had refused to renew a permission for an extension and garage. The house was in a rural area and an inspector felt that the council had failed to show changed circumstances since the original decision in 1989. It had reached a decision with no regard for the extant permission (Basingstoke & Deane 26/10/95 DCS No.034-835-387). In the case at 20 Mill Race Drive, the ownership of the land itself would not be

sufficient to warrant a changed circumstance as this issue is not a material planning consideration and has no bearing on planning policy.

- 5.25 In terms of the change of use of the land to the rear it must be accepted that each application must be determined on its own merits however regard will always be given to precedent as a material planning consideration. The change of use of the land to the rear will result in step in what is a reasonably strong boundary line along the disused railway embankment. However as referred to in paragraph 5.13 the effects from this particular application are considered acceptable. Essentially this change of use is required to allow the land where the extension has been built (in accordance with the 2007 permission), which has encroached onto Council owned land to be transferred by sale agreement to the applicant. This scenario is unique and unlikely to be replicated on any of the other properties that border the disused railway embankment. This is evident in the site location plan submitted with this application which shows how the applicants property, being positioned in a corner at the end of the cul-de-sac and angled such that any side extension projects towards this boundary with the disused railway embankment. There are no other properties that share the exact same site characteristics and subsequently it is considered that there would be no demand for this to be replicated elsewhere along this boundary with the housing estate.
- 5.26 It is thus felt that there are sufficient special circumstances which exist with this application that would preclude these proposals as being an established precedent for any future proposals which may or may not come forward from other properties.

6.0 Conclusion

6.1 In assessing this application in relation to policy and environmental context it is considered that the application should be granted for the following reasons:

- There is an extant planning consent approved in 2007 for the two storey extension. This is now built and court cases have determined that this remains a valid permission and a valid material consideration. The issue in regards to ownership would not override this. The Council have thus accepted the extension in the past and there are no overriding material planning considerations that would warrant a reversal of this decision
- Having undertaken an appraisal of the proposal from key vantage points outside of the application site, it is considered that the proposal would sit comfortably in its surrounding context complimenting the character of the area.
- The proposals would respect the amenity of the occupants of neighbouring properties through the scale, massing, siting and design measures incorporated into the design of the scheme.
- Sufficient on street parking is available and provided as a result of the extension incorporating a double garage and maintaining the driveway and as such this application would not result in circumstances which would be prejudicial to highway safety.
- The proposals would see a modest change of use of the land to the rear of the site which would not be recognised from public vantage points due to the buildings and vegetation. At this length and in this location the proposals would not compromise the function or use of the disused railway line as a recreational access way.
- There is considered sufficient special circumstances with this proposal which would ensure that the application would not set an overriding precedent with any other application for a change of use.

6.2 Having regard to the above and all other matters it is subsequently considered that the proposed development meets the expectations of policies of the Development Plan and

other policy guidance including specifically the provisions of PPS 3. It is thus felt that this application should be granted subject to conditions.

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