

## The Planning Inspectorate

### ENFORCEMENT NOTICE APPEAL FORM (Online Version)

**WARNING:** The appeal **must** be received by the Inspectorate **before** the effective date of the local planning authority's enforcement notice.

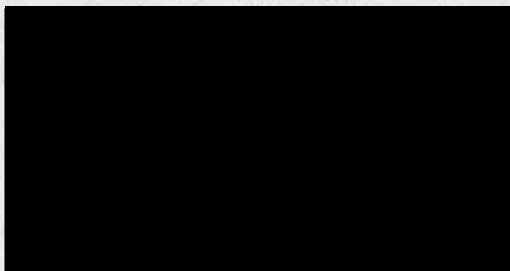
**Appeal Reference: APP/C3430/C/25/3365688**

#### A. APPELLANT DETAILS

Name

Mr ~~Jason~~ Round

Address



Email

Preferred contact method

Email ☐ Post



#### A(i). ADDITIONAL APPELLANTS

Do you want to use this form to submit appeals by more than one person (e.g. Mr and Mrs Smith), with the same address, against the same Enforcement notice?

Yes ☐ No



#### B. AGENT DETAILS

Do you have an Agent acting on your behalf?

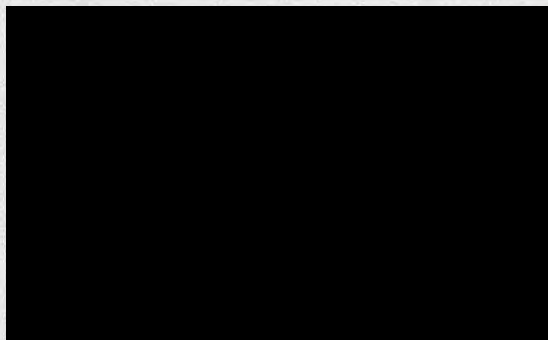
Yes ☒ No



Name

Mr Robert Mills-Pereira

Address



Phone number

Email

Preferred contact method

Email ☒ Post



#### C. LOCAL PLANNING AUTHORITY (LPA) DETAILS

Name of the Local Planning Authority

South Staffordshire District Council



LPA reference number (if applicable)	24/00068/BOC
Date of issue of enforcement notice	30/04/2025
Effective date of enforcement notice	28/05/2025

#### D. APPEAL SITE ADDRESS

Is the address of the affected land the same as the appellant's address? Yes ☐ No ☒

Does the appeal relate to an existing property? Yes ☒ No ☐

Address

Mile Flat  
Greensforge  
KINGSWINFORD  
DY6 0AU

Are there any health and safety issues at, or near, the site which the Inspector would need to take into account when visiting the site? Yes ☐ No ☒

What is your/the appellant's interest in the land/building?

Owner ☒

Tenant ☐

Mortgagee ☐

None of the above ☐

#### E. GROUNDS AND FACTS

Do you intend to submit a planning obligation (a section 106 agreement or a unilateral undertaking) with this appeal? Yes ☐ No ☒

(a) That planning permission should be granted for what is alleged in the notice. ☒

The facts are set out in

☒ [see 'Appeal Documents' section](#)

(b) That the breach of control alleged in the enforcement notice has not occurred as a matter of fact. ☐

(c) That there has not been a breach of planning control (for example because permission has already been granted, or it is "permitted development"). ☒

The facts are set out in

☒ [see 'Appeal Documents' section](#)

(d) That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. ☐

(e) The notice was not properly served on everyone with an interest in the land. ☐

(f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections. ☐

(g) The time given to comply with the notice is too short. Please state what you consider to be a reasonable compliance period, and why. ☐

#### F. CHOICE OF PROCEDURE

There are three different procedures that the appeal could follow. Please select one.

1. Written Representations



(a) Could the Inspector see the relevant parts of the appeal site sufficiently to judge the proposal from public land?

Yes

☐ No



(b) Is it essential for the Inspector to enter the site to check measurements or other relevant facts?

Yes

☒ No



Please explain.

The site is set well back from the highway

2. Hearing



3. Inquiry



G. FEE FOR THE DEEMED PLANNING APPLICATION

1. Has the appellant applied for planning permission and paid the appropriate fee for the same development as in the enforcement notice?

Yes

☐ No



2. Are there any planning reasons why a fee should not be paid for this appeal?

Yes

☐ No



If no, and you have pleaded ground (a) to have the deemed planning application considered as part of your appeal, you must pay the fee shown in the explanatory note accompanying your Enforcement Notice.

H. OTHER APPEALS

Have you sent other appeals for this or nearby sites to us which have not yet been decided?

Yes

☐ No



I. SUPPORTING DOCUMENTS

01. Enforcement Notice:

☒ [see 'Appeal Documents' section](#)

02. Plan (if applicable and not already attached)

☒ [see 'Appeal Documents' section](#)

J. CHECK SIGN AND DATE

I confirm that all sections have been fully completed and that the details are correct to the best of my knowledge.

I confirm that I will send a copy of this appeal form and supporting documents (including the full grounds of appeal) to the LPA today.

Signature

Mr Robert Mills-Pereira

Date

14/05/2025 13:47:28

Name

Mr Robert Mills-Pereira

On behalf of

Mr Paul Round

The gathering and subsequent processing of the personal data supplied by you in this form, is in accordance with the terms of our registration under the Data Protection Act 2018.

The Planning Inspectorate takes its data protection responsibilities for the information you provide us with very seriously. To find out more about how we use and manage your personal data, please go to our [privacy notice](#).

#### K. NOW SEND

Send a copy to the LPA

Send a copy of the completed appeal form and any supporting documents (including the full grounds of the appeal) to the LPA.

To do this by email:

- open and save a copy of your appeal form
- locating your local planning authority's email address:  
<https://www.gov.uk/government/publications/sending-a-copy-of-the-appeal-form-to-the-council>
- attaching the saved appeal form including any supporting documents

To send them by post, send them to the address from which the enforcement notice was sent (or to the address shown on any letters received from the LPA).

When we receive your appeal form, we will write to you letting you know if your appeal is valid, who is dealing with it and what happens next.

You may wish to keep a copy of the completed form for your records.

## L. APPEAL DOCUMENTS

We will not be able to validate the appeal until all the necessary supporting documents are received.

Please remember that all supporting documentation needs to be received by us within the appropriate deadline for the case type. If forwarding the documents by email, please send to [appeals@planninginspectorate.gov.uk](mailto:appeals@planninginspectorate.gov.uk). If posting, please enclose the section of the form that lists the supporting documents and send it to Initial Appeals, Temple Quay House, 2 The Square, Temple Quay, BRISTOL, BS1 6PN.

You will not be sent any further reminders.

Please ensure that anything you do send by post or email is clearly marked with the reference number.

The documents listed below were uploaded with this form:

Relates to Section: GROUNDS AND FACTS  
Document Description: Facts to support that planning permission should be granted for what is alleged in the notice.  
File name: ENFORCEMENT APPEAL STATEMENT (1).pdf

Relates to Section: GROUNDS AND FACTS  
Document Description: Facts to support that there has not been a breach of planning control (for example because permission has already been granted, or it is "permitted development").  
File name: ENFORCEMENT APPEAL STATEMENT (1).pdf  
File name: 1972 Mile Flat Farm Permission.pdf  
File name: 07-01309-DOCS -.pdf  
File name: Solicitors letter land ownership.docx  
File name: Letter to Council (1) re status of fence .docx  
File name: PLAN INDICATING OWNERSHIP OF ALL SITE BOUNDARIES.pdf  
File name: SITE\_LOCATION\_AND\_SITE\_PLANS\_AS\_EXISTING\_AND-674922.pdf  
File name: Appenidces list .docx

Relates to Section: SUPPORTING DOCUMENTS  
Document Description: 01. The Enforcement Notice.  
File name: Enforcement Notice - Mile Flat Farm FINAL 30.4.25.pdf

Relates to Section: SUPPORTING DOCUMENTS  
Document Description: 02. The Plan.  
File name: Enforcement Notice - Mile Flat Farm FINAL 30.4.25.pdf

Completed by MR ROBERT MILLS-PEREIRA

Date 14/05/2025 13:47:28

**PLANNING APPEAL STATEMENT**

**ENFORCEMENT NOTICE NUMBER 24/00068**

**SITE LOCATION – THE STABLE YARD MILES FLAT GREENSFORD  
KINGSWINFORD DY6 0AU**

**APPEAL BY: - JASON ROUND OF HARRISON ROUND LTD - and - P  
MOBBERLY CARPENTERS**

## **SITE PLANNING HISTORY FACTS**

1. Mile flat farmhouse was granted a planning permission for a dwelling to serve this smallholding in 1972. It was granted on appeal and is shown in the documents submitted as **appendix A**.

2. The approved location for the dwelling was shown towards the north-western corner of the site.

3. A planning permission was granted in 2007 under planning reference number 07-01309 for a two-storey rear extension to the dwelling. The submitted documents are shown in **appendix B**.

4. The dwelling to which this extension permission relates is shown as per the original planning permission siting in the north-west corner of the site.

5. Condition 3 of that permission removed 'permitted development' rights. There are two site plans submitted as part of that application. The first one with the curtilage of the dwelling drawn with a black line. The second one shows the entire curtilage of the farm outlined in red.

6. The existing dwelling to which the application to extend relates, is again shown on both plans in the north-western corner of the land.

However, when the farmhouse was built it was erected in the wrong location and is positioned in the north-eastern corner of the field well away from the approved location in the north-western corner

7. A further permission for a single storey extension was granted in 2021 under reference no 21/01341/FUL. This permission is correctly drawn but does not seek to remove any PD rights. **APPENDIX C**

8. This permission and the proposal show the farmhouse built and extended in a completely different location to that granted by the respective permissions listed at paras 1 and 3 above, in the northeastern corner of the field and not in the approved location as per the original planning permission

9. A permission was granted in 2021 for the redevelopment of the former farm buildings into 5 dwellings subject to conditions one of which was condition no 5 removing permitted development rights include Class 2 rights.

10. A planning application and an appeal against this its refusal was made seeking the reinstatement of these rights by the removal of the condition in a section 73 variation application and appeal. The documents relating to these processes are set out in **appendix D**.

## **FACTS and ARGUMENTS**

It is submitted that:

1. The Mile Flat farmhouse was erected in a significantly different position to that approved in 1972 and any conditions imposed on that permission or subsequent approved extension in 2007 as a consequence are not effective and invalid.
2. The permission for approved extensions in 2007 (**APP. B**) to the farmhouse, which also removed PD rights and which the Council rely on to determine whether the developer has PD rights on the larger area of land on the farm plan edged red, are granted to a dwelling that is in effect unauthorized apart



from the length of time that it has endured. The conditions must be rendered Ultra Vires.

3. The fence that is shown erected on the north-west boundary overlaid in yellow was erected on the 10<sup>th</sup> May 2022 (after the issue of the consent) by the developer on the instruction of the neighbours Mr and Mrs Quigley but it is asserted on their land. If this were not the case the fence would have to be taken down and re-erected on the Quigleys land under the PD rules that they benefit from. The Fence posts are positioned inward to the Quigleys indicating their ownership and the letter obtained from the Solicitor who acted for the developer indicates that maintenance of the boundary is adopted by the Quigley's and the developer having transferred maintenance liability and would not have retained implied ownership. **appendix E**
4. The Planning Permission was issued after the disposal of the land to Mr and Mrs Quigley who bought the land on the 9<sup>th</sup> April who would be unaware of the condition which the council intended to impose in respect of the fence on their boundary when they bought the property which was not imposed or issued publicly until yet 22<sup>nd</sup> April – see letter from the Conveyancing Solicitor
5. The developer asserts that he has erected the fence 200mm inside the line of the neighbour's ownership.
6. Given that the fence is controlled by the adjacent landowner the fence cannot be removed by the developer otherwise a civil tort may occur.
7. The neighbours enjoys full Permitted Development rights on their land. The PD right to fence land set out in part 2 class A pf the GPDO is not restricted to development situations or to the curtilage of a dwelling but is a universal right

applying everywhere, including throughout the Green Belt. It was not taken away by a planning condition prior to their acquisition of the property.

### **SECTION 174 2A**

8. In regard to the appeal decision to allow the removal of PD rights but not those in relation class A part 2 and having regard to paragraph 174 2A which seeks to preclude an appeal by an appellant under section 2 on the grounds that a planning permission ought to be granted for the development in question, it is argued that this issue was not properly addressed in the earlier appeal which was a broad brush application and appeal to remove the planning conditions which removed a range of PD permissions. The appellant was not given the opportunity to argue the merits of the fencing in relation to the technical issues set out above nor the impact of the fencing on the Greenbelt and the concept of 'openness'.

At the same time the purchasers, who could not be aware of the planning condition when they bought the property on the 9<sup>th</sup> April since it was not imposed until the 22<sup>nd</sup> April have not previously had the opportunity of appealing on ground A and therefore paragraph 174 is not appropriate in this instance.

The fences are viewed against the close background of a mass of significantly taller buildings. An examination of the photographs showing the fence in the foreground demonstrates in my view that the fence does not diminish or further restrict any sense of openness than that arising from the development.

This will be all the more so when the row of evergreen trees which the appellants have planted along the boundary of the driveway leading from the public highway to the development have matured.

At the same time the shrubs that the appellant has planted against the fence significantly ameliorates the suburban nature of the fencing. In the appellant's submission the Council should have had regard to the imposition of planning conditions in respect of landscaping and screening rather than resort to enforcement action. Planning conditions will overcome any harm in respect of the suburban nature of the fencing.

The planning permission granted consent for the redevelopment of this site with 5 dwellings. The dwellings have been erected. Planning conditions were imposed and as the site is located within the Green Belt condition no 5 was imposed on the planning permission. This reads as follows: -

Notwithstanding the provisions the Town and Country Planning (General Permitted Development) Order 2015 (as amended), or any other equivalent order, no development within the following classes of development shall be carried out to eth dwelling(s) hereby approved without the prior approval of the Local Planning Authority:

- a. Schedule 2, Part 1, Class A -enlargement, improvement or other alteration
- b. Schedule 2, Part 1, Class B- addition or alteration to the roof
- c. Schedule 2, Part 1, Class C- any other alteration to the roof
- d. Schedule 2, Part 1, Class D- porches
- e. Schedule 2, Part 1, Class E- Gate, wall, fence, or other means of enclosure

The reasoned justification given on the notice for the imposition of the condition was:

Reason – The site is within the Green Belt within which, in accordance with the planning policies in the adopted Core Strategy, there is a presumption against 'inappropriate development'.

The application was brought to give the LPA an opportunity to reconsider the condition imposed in the light of this statement. This adduces as evidence several Planning Inspectors appeal decisions who considered the issues of:

1. imposing this precise condition;
2. removing permitted development right so as to protect the Green Belt;
3. and as to whether Permitted Development is “Inappropriate Development” in terms of the NPPF which defines the concept.
4. And at the same time the specific Guidance given in the National Planning Policy Guidance is examined.

The site is located on land within a Green Belt designated area.

The South Staffs Core Strategy policy GB1 seeks to ensure that development is in accordance with national policy as set out in The National Planning Policy Framework, NPPF. However, whilst the NPPF seeks to limit inappropriate development in the Green Belt designated areas. The NPPG does not regard Permitted Development as being “inappropriate development”.

Planning Practice Guidance, (PPG) paragraph 003 sets out the 6 tests for the imposition of planning conditions. They must be necessary, relevant to planning relevant to the development permitted enforceable, precise, and reasonable in all other respects.

PPG Paragraph 017 states conditions restricting the future use of “permitted development” rights will rarely pass the test of necessity and should only be used in exceptional circumstances. 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.

I can find no public policy either in a Development Plan; or Central Government Policy in the form of the NPPF or the NPPG; or judicial precedent which supports the idea that “Permitted Development” is “Inappropriate Development” that justifies its preclusion from the Green Belt.

On the other hand, there is clear guidance from the Secretary of State, in the NPPG and given in a number of planning appeal decisions, that imposing planning conditions to remove

domestic permitted development, because of the Green Belt or general visual amenity is not supported.

This status of domestic permitted development within the Green Belt has been clarified and reiterated many times on appeal. I set out an extract taken from **DCP notes** in relation to an appeal, as long ago as 2014, with reference number provided, which discusses this specific matter and confirms this understanding: -

***“A recent decision in the appeal case of Enfield 13/10/2014 DCS No 400-005-437 was clear that conditions limiting permitted development rights are not supported by government policy. The inspector determined that two conditions which had been imposed on a planning permission for a new dwelling in the green belt should be removed, thereby allowing the appellant to exercise his permitted development rights. The first condition prevented any extensions to the dwelling whilst the second restricted the construction of buildings or structures within its curtilage. The site lay within the green belt and the council had highlighted the scale of potential development should the conditions be removed. But the inspector placed weight on the absence of any government policies which sought to restrict permitted development rights at houses in green belt locations. Whilst an individual might wish to cover 50 per cent of their curtilage with built development this was unlikely to occur in reality and in the light of the government's growth agenda there were no exceptional circumstances justifying their continued removal at the appeal site. Such blanket restrictions should not be condoned unless the council could prove that they were reasonable and necessary”.***

Permitted development is development for which permission has already been granted by secondary legislation and with the Authority of Parliament no less, and there are no restrictions within the GPDO for domestic extensions or for development located within the curtilage of dwellings located within the Green Belt, whereas such restrictions do exist (for example) on dwellings within Conservation Areas and National Parks.



Community safety is a development plan objective and the need for adequate fencing for residents to feel secure is an important consideration which was not adequately reflected in the previous appeal.

Equally the need for privacy is an important development plan consideration and underpins the universality of this class of permitted development.

Rob Mills, MRTPI





















**SAFETY**

For the Health & Safety of all persons working on this site, all persons must wear safety helmets at all times. Failure to do so may result in disciplinary action.

**Construction site is dangerous**  
Persons are advised to wear safety helmets at all times.

**Safety helmets must be worn**

Unauthorized entry to this site is strictly forbidden.







---

# Appeal Decision

Site visit made on 4 November 2024

by U P Han BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2024

---

Appeal Ref: APP/C3430/W/24/3342944

Land adjacent to Mile Flat House, Mile Flat, Greensforge DY6 0AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr Jason Round of Harrison Round Ltd against the decision of South Staffordshire District Council.
  - The application Ref is 24/00149/VAR.
  - The application sought planning permission for demolition of existing buildings and erection of 5 no. dwellings with associated parking and garden areas with foul treatment plant without complying with a condition attached to planning permission Ref 21/00058/FUL, dated 22 April 2021.
  - The condition in dispute is No 5 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), or any other subsequent equivalent order, no development within the following classes of development shall be carried out to the dwelling(s) hereby approved without the prior approval of the Local Planning Authority:
    - a. Schedule 2, Part 1, Class A - enlargement, improvement or other alteration
    - b. Schedule 2, Part 1, Class B - addition or alteration to the roof
    - c. Schedule 2, Part 1, Class C - any other alteration to the roof
    - d. Schedule 2, Part 1, Class D - porches
    - e. Schedule 2, Part 1, Class E - garden buildings, enclosures, pool, oil or gas storage container
    - i. Schedule 2, Part 2, Class A - gate, wall, fence or other means of enclosure.
  - The reason given for the condition is: The site is within the Green Belt within which, in accordance with the planning policies in the adopted Core Strategy, there is a presumption against inappropriate development.
- 

## Decision

1. The appeal is allowed and planning permission is granted for demolition of existing buildings and erection of 5 no. dwellings with associated parking and garden areas with foul treatment plant at Land adjacent to Mile Flat House, Mile Flat, Greensforge DY6 0AU in accordance with the application Ref 24/00149/VAR, without compliance with condition number 5 previously imposed on planning permission 21/00058/FUL dated 22 April 2021 but subject to the conditions in the attached schedule.

## Applications for costs

2. An application for costs was made by Mr Jason Round of Harrison Round Ltd against South Staffordshire District Council. This application is the subject of a separate decision.

## Background and Main Issues

3. Planning permission was granted for the erection of 5 dwellings (the approved scheme) which has been implemented. The approved scheme was found not to be inappropriate development in the Green Belt. However, the Council indicates that condition 5 is necessary to ensure that the proposal remains acceptable in Green Belt terms, particularly with regard to maintaining the openness of the Green Belt.
4. In addition, the Decision Notice and Officer Report suggest that the condition is necessary to protect the character and appearance of the site and surrounding area. These reasons are different to the one given in the Decision Notice for the approved scheme which refers to the site being within Green Belt where there is a presumption against inappropriate development. However, the Council may argue that the condition is necessary for different additional reasons. My consideration of the appeal must be based on present circumstances and so is not confined to the original reasons given for imposing the condition.
5. The appellant is seeking removal of the condition on the grounds that it is not reasonable or necessary. Furthermore, the appellant contends that permitted development is not inappropriate development and exceptional circumstances have not been demonstrated to justify the condition.
6. Given this background, the effect of the proposal on the Green Belt is a relevant matter for consideration in this appeal. Comments have been sought from the main parties with regard to the effect of the proposal on the Green Belt.
7. Accordingly, the main issues are the effect of removing the condition on:
  - the openness of the Green Belt;
  - the character and appearance of the site and surrounding area; and
  - in the event that allowing the proposal would lead to inappropriate development in the Green Belt, whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

## Reasons

### Green Belt Openness

8. The appeal site is in Green Belt where, under Policy GB1 of the Core Strategy (December 2023) (the CS), development is acceptable within the terms of the National Planning Policy Framework (the Framework). The Council states that the approved scheme was determined under paragraph 154(g) of the Framework and thus found to comply with Policy GB1. The approved scheme involved the redevelopment of previously developed land which would not have a greater impact on the openness of the Green Belt than the existing development.
9. The Framework indicates that openness is an essential characteristic of the Green Belt with a fundamental aim of Green Belt policy being to prevent urban sprawl and keep land permanently open.

10. The development is arranged in a courtyard style with the all the front of the dwellings facing each other. The rear of the dwellings and their gardens are exposed to the surrounding area, particularly to the east and south which overlook open rolling countryside. There is a paddock to the west and three large houses with substantial curtilages to the north.
11. The appellant states their intentions are yet unconfirmed but have submitted drawings to the appeal indicating the intention to erect a garage with a pitched roof in the rear garden of plot 2 and install roof lights to the dwelling of plot 4. The garage would be accessed through the rear garden of the adjoining plot and during my site visit I saw that closed boarded timber fencing has been erected to delineate the boundary of the access. Similar fencing has also been erected to the boundaries of three of the plots in the north part of the development, enclosing their rear gardens.
12. Class A Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO) limits the size and height of extensions or alterations that are permitted. Nevertheless, permitted development rights can in some circumstances permit sizeable extensions. Given the layout of the development, this would lead to an unacceptable reduction in the spatial and visual openness of the Green Belt. Furthermore, as the appeal site contains 5 dwellings, the cumulative impact of their enlargement would potentially cause significant harm to the openness of the Green Belt. Therefore, this part of condition 5 is necessary to make the approved scheme acceptable.
13. Class B Part 1 of the GPDO permits additions or alterations to a roof to enlarge a house. However, no part of the house once enlarged is permitted to exceed the height of the highest part of the roof of the existing house. Given the specific limitations and conditions set out in the GPDO, the exercise of this particular permitted development right would be unlikely to harm the openness of the Green Belt.
14. Class C Part 1 of the GPDO provides for other alterations to the roof of a house, such as rooflights. Such alterations would be unlikely to impact the openness of the Green Belt as they are small-scale and would not increase the overall height or mass of the buildings.
15. Class D Part 1 of the GPDO permits the erection of a porch outside any external door of a house. Given the size limitations set out in the GPDO, as well as the courtyard style layout of the development with all the front elevations of the dwellings facing inward, development under this permitted development right would be unlikely to harm the visual openness of the Green Belt.
16. Class E Part 1 of the GPDO provides for any building or enclosure, swimming or other pool incidental to the enjoyment of the dwelling. It also permits a container for the storage of oil, liquid or gas for domestic heating purposes. While such development must not exceed 50% of the total area of the curtilage, given the relatively exposed siting of the dwellings within the Green Belt, the exercise of this permitted development right would likely lead to an unacceptable reduction in the spatial and visual openness of the Green Belt.
17. Class A Part 2 of the GPDO permits the erection or alteration of a gate, fence, wall or other means of enclosure. The Council indicate that the appeal site is



subject to an enforcement case where closed boarded timber fencing has been erected in lieu of approved post and rail fencing and hedging. During my site visit I was able to see the effects of the closed boarded timber fencing which has been erected around the plots in the north part of the site. This had the effect of enclosing the site and harming the visual openness and rural character of the area. The south and east parts of the site are particularly exposed to the surrounding area and have a close visual and spatial relationship with the open countryside. The erection of similar fencing, to that which I saw during my site visit to these plots, would further enclose the site and disconnect it from its surroundings.

18. The appellant refers to a version of the Planning Practice Guidance (PPG) where it states 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." The Framework states that planning conditions should not be used to restrict national permitted development rights unless there is a clear justification to do so. The latest version of the PPG states that "conditions restricting the future use of permitted development rights 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." Condition 5 is precisely defined by reference to the relevant provisions in the GPDO and confined to a small area.
19. Notwithstanding the fact that permitted development rights have not been withdrawn in total or in part in the Green Belt in the GPDO, I have found that parts of condition 5 relating to Class A Part 1, Class E Part 1 and Class A Part 2 are necessary to make the approved scheme acceptable. Therefore, the condition passes the tests of reasonableness or necessity as set out in the PPG. The removal of permitted development rights under Class A Part 1, Class E Part 1 and Class A Part 2 is clearly justified to preserve the openness of the Green Belt.
20. For the reasons given, I find that development under Class B Part 1, Class C Part 1, and Class D Part 1 would not have a harmful effect on the openness of the Green Belt. Hence, it would comply with Policy GB1 of the CS which seeks to protect the Green Belt from inappropriate development. Nevertheless, I find that development under Class A Part 1, Class E Part 1 and Class A Part 2 of the GPDO would cause harm to the openness of the Green Belt, conflicting with Policy GB1 of the CS. In accordance with the Framework, substantial weight must be given to this harm.

#### Character and Appearance

21. The appeal site is set behind the large curtilage of a dwelling which faces Mile Flat. The site's position away from the highway, overlooking open countryside to the east and south, give it a distinctly rural character. This rural character is further enhanced by the undulating topography of the area, the Dawley Brook and the agricultural fields to the east and south of the site.
22. The design of the development reflects the rural character of the area and features a courtyard style layout along with simple single storey brick buildings that create a cohesive and aesthetically harmonious development. Contrary to the appellant's view, I do not consider it be typical of suburban

style housing development due to its layout and design. Class A Part 1 of the GPDO can in some circumstances permit sizeable extensions that would not appear subordinate to the host dwelling and would therefore be harmful to the character and appearance of the site and surrounding area. Therefore, this aspect of the condition is necessary to ensure the development remains sympathetic to the design of the site and the rural character of the surrounding area.

23. Given the specific limitations and conditions set out in the GPDO in relation to Class B Part 1, Class C Part 1 and Class D Part 1, any additions or alterations in these respects would be limited in scale and would therefore appear subordinate to the host dwellings. On this basis, such development would be unlikely to cause harm to the character and appearance of the site and surrounding area.
24. Under Class E Part 1 any building, enclosure, swimming or other pool would be allowed to take up to 50% of the total area of the curtilage. Due to the layout of the development, such permitted development would be clearly visible and visually obtrusive to the coherent design of the development. Consequently, it would have an unduly harmful effect on the character and appearance of the site and surrounding area.
25. The low height and visually open appearance of the existing post and rail fencing suits the countryside character of the site and surrounding area. Development under Class A Part 2 such as the erection of higher closed boarded timber fencing, which has taken place on parts of the site, would have the effect of eroding the rural character of the site and the surrounding area, as observed during my site visit.
26. For the reasons given, I find that development under Class B Part 1, Class C Part 1, and Class D Part 1 would not have a harmful effect on the character and appearance of the site and surrounding area. Consequently, it would comply with Policies EQ4 and EQ11 of the CS insofar as they require development to maintain intrinsic rural character and take account of local character and distinctiveness. Nevertheless, I find that development under Class A Part 1, Class E Part 1 and Class A Part 2 of the GPDO would cause significant harm to the character and appearance of the site and surrounding area, conflicting with the aforementioned CS policies.

#### Other Considerations and Very Special Circumstances

27. Development under Class A Part 1, Class E Part 1 and Class A Part 2 of the GPDO would lead to a loss of openness of the Green Belt. Substantial weight is given to the harm to the Green Belt and development should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt, and any other harm resulting from the proposal, are clearly outweighed by other considerations.
28. The appellant has drawn my attention to an appeal decision<sup>1</sup> relating to a site in Warrington, in the Green Belt. However, that site was described by the Inspector as being well-contained and physically restricted so is not directly comparable to the appeal site. The appellant has also referred to appeal decisions<sup>2</sup> relating to site near the appeal site. However, there is limited

---

<sup>1</sup> APP/M0655/W/20/3260646.

<sup>2</sup> APP/C3430/W/21/3278321 and APP/C3430/W/21/3278322.

information before me to establish whether they are comparable to this appeal proposal. Furthermore, the Inspector determined that the condition in dispute was necessary and reasonable to ensure that development under Class A Part 2 of the GPDO does not harm the character and appearance of the area and the openness of the Green Belt.

29. The appellant suggests that the Council's Core Strategy policies are inconsistent with national planning policy. However, no substantive evidence has been advanced to demonstrate how they are inconsistent. In any event, I find Policy GB1 which seeks to protect the Green Belt from inappropriate development to be consistent with the Framework's Green Belt policies. I also find Policies EQ4 and EQ11 which require development to reflect local character to be consistent with the Framework's design policies.
30. The appellant contends that the erection of fencing is required in the interests of the security and privacy of future occupiers of the dwellings. However, no substantive evidence has been submitted to demonstrate that there are, or would be, issues in relation to these matters. Notwithstanding this, I have had due regard to the appellant's rights under Article 1 of the First Protocol and Article 8 of the European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act 1998 (HRA). These are qualified rights and interferences may be justified where they are proportionate and in the public interest.
31. I have identified harm with regard to the openness of the Green Belt and the character and appearance of the site and surrounding area under development permitted by Class A Part 2 of the GPDO. The objectives of preserving the openness of the Green Belt and achieving well-designed places are well-established planning policy aims. As such, the removal of permitted development under Class A Part 2 of the GPDO would be proportionate and necessary. It would not result in a violation of the Human Rights of the appellant. Protection of the public interest cannot be achieved by means that are less interfering of their rights.
32. The other considerations before me do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify development under development under Class A Part 1, Class E Part 1 and Class A Part 2 do not exist.

### Conditions

33. Where planning permission is granted under section 73, it is not automatically subject to the conditions which were attached to the original permission. The PPG therefore advises that the conditions which continue to have effect should be restated in the interests of clarity. I have considered the conditions suggested by the Council and shall impose those conditions from the original planning permission that remain relevant, alongside replacing condition 5. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

### Conclusion

34. For the reasons given, condition 5 is not reasonable or necessary to prevent harm to the openness of the Green Belt by way of development under Class B Part 1, Class C Part 1, and Class D Part 1 of the GPDO. Nor is the condition

necessary to prevent harm to the character and appearance of the site and surrounding area by way of such development.

35. Condition 5 is necessary and reasonable, however, to ensure that development by way of Class A Part 1, Class E Part 1 and Class A Part 2 does not harm the openness of the Green Belt, and the character and appearance of the site and surrounding area.
36. In conclusion, for the reasons given above, and taking into account all other matters raised, the appeal should succeed. I will grant a new planning permission substituting condition 5 with a replacement and restating those undisputed conditions that are still subsisting and capable of taking effect.

*U P Han*

INSPECTOR

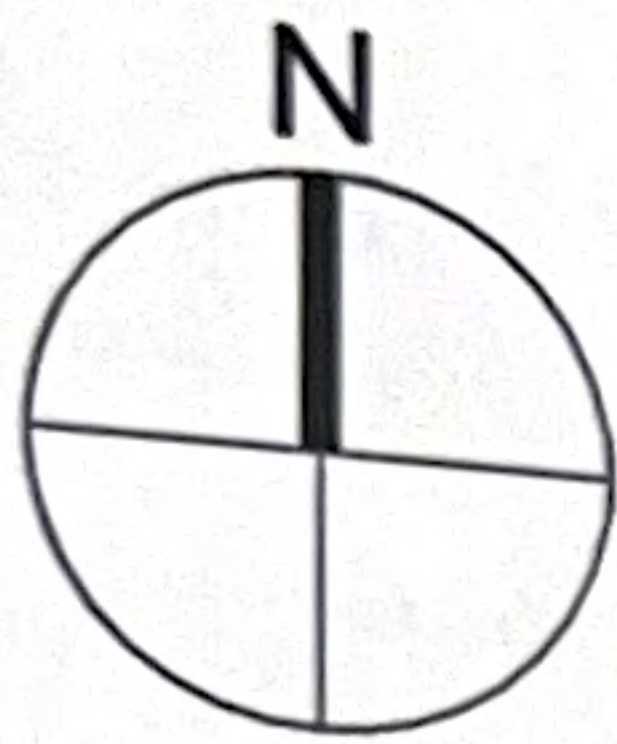
#### Schedule of Conditions

- 1) The development shall be carried out in accordance with the approved drawings: 1265/A/003 Rev A, 1265/A/005 Rev A, 1265/A/002B Rev A, 1265/A/002A Rev A, 1265/A/004B and 1265/A/004A received 19/01/2021, 23/03/2021 and 25/03/2021.
- 2) Within 3 months of any development commencing on the site a landscape scheme shall be submitted to the Local Planning Authority for approval. The approved scheme shall be implemented concurrently with the development and completed within 12 months of the completion of the development. The Local Planning Authority shall be notified when the scheme has been completed. Any failures shall be replaced within the next available planting season and the scheme shall be maintained to the satisfaction of the Local Planning Authority. The planting shall be retained and maintained for a minimum period of 10 years by the property owner from the notified completion date of the scheme. Any plant failures that occur during the first 5 years of the notified completion date of the scheme shall be replaced with the same species within the next available planting season (after failure).
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), or any other subsequent equivalent order, no development within the following classes of development shall be carried out to the dwellings hereby approved without the prior approval of the Local Planning Authority:
  - a. Schedule 2, Part 1, Class A - enlargement, improvement or other alteration
  - b. Schedule 2, Part 1, Class E - garden buildings, enclosures, pool, oil or gas storage container
  - c. Schedule 2, Part 2, Class A - gate, wall, fence or other means of enclosure
- 4) The development hereby approved shall not be occupied until all of the buildings labelled A, B, C, D and E on plan 1265/A/005 Rev A have been demolished and all materials removed from the site.

- 5) The development hereby permitted shall not be brought into use until the existing access to the site within the limits of the public highway has been reconstructed and completed.
- 6) The development hereby permitted shall not be brought into use until the access road, parking and turning areas have been provided in accordance with the approved plans.
- 7) The garages indicated on the approved plan shall be retained for the parking of motor vehicles and cycles. They shall at no time be converted to living accommodation without the prior express permission of the Local Planning Authority.
- 8) All site works must comply with measures set out in the Risk Avoidance Method Statement (Camlad Ecology Ltd., January 2021).
- 9) Within three months of commencement of the development, details of biodiversity enhancement measures including 1 swallow feature on the new buildings shall be submitted to and approved in writing by the local planning authority. The approved measures shall be incorporated into the scheme and be fully constructed prior to occupation of the buildings and retained as such thereafter.
- 10) Within 3 months of commencement of the development, details of the type and location of biodiversity enhancement measures including 1 group of 3 number swift boxes and 2 number house sparrow terraces on or integrated into north- or east- facing brickwork of the new buildings shall be submitted to and approved in writing by the local planning authority. The approved measures shall be incorporated into the scheme and be fully constructed prior to occupation of the buildings and retained as such thereafter.
- 11) Within 3 months of commencement of the development, details of biodiversity enhancement measures including 3 number integrated bat tubes or bat boxes within the new building, shall be submitted to and approved in writing by the local planning authority. The approved measures shall be incorporated into the scheme and be fully constructed prior to occupation of the buildings and retained as such thereafter.
- 12) Within 3 months of commencement of the development, boundary fence details for gardens that include gaps of minimum 130mm square at ground level at least every 10m running length or that do not seal to the ground at all between posts with a 120mm gap from fence base to ground shall be submitted to the Local Planning Authority for approval. The development shall be carried out in accordance with the approved details.

End of Conditions





Ordnance Survey (c) Crown Copyright 2021. All rights reserved. Licence number 100022432

01

## LOCATION PLAN

1:1250