APPLICATION REPORT – 20/01139/S106A

Validation Date: 26 October 2020

Ward: Heath Charnock And Rivington

Type of Application: Section 106 Amendment

Proposal: Request under Section 106A of the Town and Country Planning Act 1990 (as amended) and the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 to discharge a planning obligation (Unilateral Undertaking removing Permitted Development Rights) dated 12th May 2013 associated with planning approval reference 12/01121/FUL, which was for the erection of a replacement dwelling

Location: Cardwell House Rawlinson Lane Heath Charnock Chorley PR7 4DF

Case Officer: Caron Taylor

Applicant: Mr And Mrs M Bamford

Agent: N/A

Consultation expiry: 18 November 2020

Decision due by: 25 January 2021

RECOMMENDATION

1. It is recommended that the application is refused for the following reason:

   It is considered that the Unilateral Undertaking still meets the test sets out in the National Planning Policy Framework and its discharge could result in harm to the openness of the Green Belt contrary to planning policies.

SITE DESCRIPTION

2. The application site is located in the Green Belt on Rawlinson Lane, Heath Charnock. The existing property is a detached dwellinghouse.

DESCRIPTION OF PROPOSED DEVELOPMENT

3. The dwellinghouse was permitted under planning permission ref: 12/01121/FUL. A Unilateral Undertaking proposing not to implement permitted development rights under Schedule 2, Part 1 Classes A-C (extensions, additions to the roof and alterations to the roof) was put forward for consideration and accepted as a material consideration in permitting the application. The applicant now wishes to have the Unilateral Undertaking discharged.

4. The dwelling is complete and occupied.

PLANNING CONSIDERATIONS

5. Guidance on the use of planning conditions and obligations can be found in the National Planning Policy Framework (The Framework) at paragraph 54 onwards. This states:

54. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

55. 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. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.

56. Planning obligations must only be sought where they meet all of the following tests.

a) necessary to make the development acceptable in planning terms;
b) directly related to the development; and
c) *fairly and reasonably related in scale and kind to the development.*

Applicant's case and response

6. The applicant states that the planning obligation fails the tests of necessity and reasonableness. They state that Circular 11/95 paragraph 87 states: "*Both development orders and Use Classes Order, however, are designed to give or confirm a freedom from detailed control which will be acceptable in the great majority of cases. Save in exceptional circumstances, conditions should not be imposed which restrict either permitted development right granted by development order or future changes of use which the Use of Classes Order would otherwise allow. The Secretaries of State would regard such conditions as unreasonable unless there were clear evidence that the uses excluded would have serious effects on amenity of the environment, that there were no other forms of control, and that the condition would serve a clear planning purpose."*

7. In light of the above presumption against conditions restricting permitted development, the planning obligation by Unilateral Undertaking has been unreasonably imposed.

8. The applicant goes on to state that in light of the above presumption against conditions restricting permitted development, the planning obligation by Unilateral Undertaking has been unreasonably imposed.

9. To respond to this, firstly Circular 11/95 was cancelled in 2014. However, notwithstanding this it accepts that in exceptional circumstances conditions could be imposed that restricted permitted development rights. At the time the application for the dwelling was considered it was considered an exceptional circumstance.

10.It is clear from the officer's report at the time that the dwelling, being a 47.8% increase in volume over the dwelling that it was to replace would be materially larger and was, therefore, contrary to Green Belt policy. The council have adopted policies and supplementary planning documents that consider a 30% increase in volume to be acceptable in the Green Belt and to not be materially larger.

11.However, at the time of the application the applicant/agent put forward an argument that rather than build a smaller house that complied with the 30% increase policy and then use permitted development rights to extend it once it was substantially complete, they would build a larger dwelling from the outset as a single building operation equivalent to a 30% increase plus the size of extensions that could be built later using permitted development rights. They offered up a Unilateral Undertaking to not then exercise permitted development rights that the larger dwelling would normally benefit from if granted planning permission.

12.Therefore, although their proposal at that time would have resulted in an increase in volume of the property over the 30% permissible under planning policy, it would be no larger than if they

built a smaller house and then extended it using permitted development rights, therefore having no greater impact on the Green Belt overall.

13.The Unilateral Undertaking was considered as a material consideration in the decision-making process and the safeguards it proposed were considered sufficient to allow a larger dwelling than normally permitted by planning policies.

14.It must be made clear that the Unilateral Undertaking was not imposed by the council, rather it was offered up by the applicant/agent at the time of application as a way of making an otherwise unacceptable development acceptable, exactly as intended by the government guidance in relation to planning conditions and obligations.

15.It is fair to say that had the Unilateral Undertaking not been provided the application would in all likeliness have been refused as the proposal was contrary to policy for the reasons already set out in this report. The Unilateral Undertaking was not imposed upon the applicant by the council, other than that the council advised the planning application would be unacceptable without it. If the applicant did not wish to be bound by the agreement in the future as they now find themselves, they should not have offered up the Unilateral Undertaking, but rather made an appeal against a refused planning application and put their case forward to an Inspector.

16.The applicant states that if the Unilateral Undertaking is discharged the appearance of the area would not be impacted upon by any development that falls within the realms of permitted development and it would not be allowed under permitted development rights for an extension to impact upon the amenities of neighbours, as any potential alteration, extension or outbuilding, would have to be designed in accordance with permitted development guidelines.

17.This is not the reason the Unilateral Undertaking was considered a material consideration in the decision-making process. The issue at the time of the application was harm to the Green Belt and the Unilateral Undertaking is still considered necessary to prevent that harm if permitted development rights were to be exercised on top of the larger size of dwelling that has now been constructed.

18.It is, therefore, considered that the Unilateral Undertaking that was offered up and taken into account as a material consideration in the decision-making process still meets the tests set out in the Framework. It is:

a. necessary to make the development acceptable in planning terms for the reasons that have been set out;
b. directly related to the development; and
c. fairly and reasonably related in scale and kind to the development.

19.It is accepted that the dwelling the subject of the planning application is the ‘original dwelling’ for the purposes of future planning applications and their assessment against Green Belt policy. However, if the Unilateral Undertaking was discharged as requested by this application the dwelling would benefit from both permitted development rights and consideration of extensions under planning policy up to 50%. This would be harmful to the openness of the Green Belt.

20.The applicant has quoted other applications that have been permitted with no condition imposed [and it must be added no Unilateral Undertaking taken into consideration] removing permitted development rights. The reports for these applications have been reviewed and each clearly state the increase in volume of the dwelling that they were to replace as follows:

12/00145/FUL this was a 30% increase in volume so complied with policy.

12/00071/FUL this was less than a 30% increase in volume.

10/00802/FUL approximately 31% increase.

10/00286/FUL 30.9% increase.

19/00781/FUL 29% increase.

17/00719FUL 23% increase.

16/00905/FUL and 17/00731/FUL -1.4% reduction in volume, -4.7% reduction in footprint, -0.4% reduction in height and -78% reduction in hardstanding area. The case officer did impose a condition removing permitted development rights which the applicant applied to have removed. The condition was removed when the case was reviewed as it was considered unnecessary as the application complied with policy in terms of the impact on the Green Belt as it was a reduction in volume.

21.Therefore, each of the proposals above complied with policy in terms of not being materially larger than the dwelling/buildings they replaced, unlike the dwelling approved on this site where the Unilateral Undertaking was taken into account as a material consideration in allowing a dwelling that was an increase of 47.8%, well above the normally permitted 30% increase.

22.The applicant quotes a planning application from 2005 ref: 05/0148/FUL where a 72% increase was permitted. This however, pre-dates both the Framework and local policy and guidance. This permission was granted under former Planning Practice Guidance Note No.2 and superseded local planning guidance which did allow larger increases at that time, it is not therefore relevant to the current case.

23.The applicant has also quoted applications regarding change of use of land from agricultural use to garden being permitted, however these applications are not relevant to current matter as the proposal did not involve extensions to garden.

CONCLUSION

24.It is considered that the Unilateral Undertaking still meets the test sets out in the Framework and its discharge could result in harm to the openness of the Green Belt contrary to planning policies. The application is, therefore, considered to be unacceptable and is recommended for refusal.

RELEVANT HISTORY OF THE SITE

Ref: 12/00119/FUL **Decision:** PERFPP **Decision Date:** 17 April 2012
Description: Erection of a replacement dwelling

Ref: 12/00489/FUL **Decision:** PERFPP **Decision Date:** 8 August 2012
Description: Application to remove condition no. 12 (which removed permitted development rights) of planning permission no. 12/00119/FUL, which permitted the erection of a replacement dwelling on the site

Ref: 12/01121/FUL **Decision:** PERFPP **Decision Date:** 17 May 2013
Description: Erection of a replacement dwelling, detached garage, detached garden room and relocated access. (Amendment to plans approved by 12/00119/FUL)

Ref: 13/01139/DIS **Decision:** PEDISZ **Decision Date:** 23 January 2014
Description: Application to discharge conditions numbered 4 (facing materials), 6 (ground and slab levels), 7 (landscaping), 9 (boundary treatments), 11 (hard ground surfacing materials) and 12 (driveway and parking area) of planning 12/01121/FUL

RELEVANT POLICIES: In accordance with s.38 (6) Planning and Compulsory Purchase Act (2004), the application is to be determined in accordance with the development plan (the Central Lancashire Core Strategy, the Adopted Chorley Local Plan 2012-2026 and adopted Supplementary Planning Guidance), unless material considerations indicate otherwise. Consideration of the proposal has had regard to guidance contained within the National Planning Policy Framework (the Framework) and the development plan. The specific policies/ guidance considerations are contained within the body of the report.