

PLANNING STATEMENT

Ref: PS-XKL-917 A

Bradwardine, Desford Lane, Ratby, Leicester, LE9 2BQ

Demolition of existing bungalow and stables to be replaced with relocated house and
stable block

1. Introduction

This Statement has been prepared by Faraday Planning on behalf of the applicants, Mr and Mrs McDonagh, in support of an application for full planning permission for the above-mentioned development.

A proportionate degree of evidence will be adduced to demonstrate the acceptability of the proposals in planning terms having due regard to the provisions of the development plan and surrounding legal context.

2. Legal Principles

Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990 provide that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise.

In determining whether a proposal accords with the development plan, the decision-maker must have regard to the following principles laid down by the courts:

- In fulfilling the requirement of Section 38(6), the decision-maker must establish whether the proposal accords with the development plan as a whole: *BDW Trading Ltd. v Secretary of State for Communities and Local Government* [2016] EWCA Civ 493 at [21].
- Policies within the development plan may “pull in different directions”, with some supporting a proposal and others weighing against it: *R v Rochdale Metropolitan Borough Council, ex parte Milne* [2000] EWHC 650 at [48].

- The-decision maker must assess the proposal against the potentially competing policies and then conclude whether “in the light of the whole plan the proposal does or does not accord with it”: *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 W.L.R. 1447 at p1459D-F.
- To this end, a series of judgements must be made as to, *inter alia*, the relative importance of each policy, how decisively the policies support or weigh against the proposal, and the extent of any breach: *R v Rochdale Metropolitan Borough Council, ex parte Milne* [2000] EWHC 650 at [51].

3. Planning Policy

The most relevant Development Plan Documents (DPDs) in this case are as follows:

- Core Strategy (adopted December 2009)
- Site Allocations & Development Management Policies (adopted July 2016)

As a matter of planning judgement, due regard must also be had to the Council's Supplementary Planning Documents (SPDs). The most relevant SPDs in this case are as follows:

- Hinckley & Bosworth Internal Space Standards Report 2021
- The Good Design Guide 2020

The revised National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these should be applied. It is a material consideration in the determination of all planning applications. At its heart is a presumption in favour of sustainable development and, in this respect, paragraph 11 provides the following:

“For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay”

4. The proposals

The proposals have been designed to facilitate the operations of the applicants' existing equestrian business and provide a more suitable form of accommodation for the applicants' family. In doing so, the sensitivities of the site have been taken into account, specifically with respect to its rural and verdant context.

The site is not located on green belt land, nor is it within in a designated conservation area. As such, in assessing the appropriateness of the site layout and design of the proposed buildings, regard must be had to the resultant appearance of the site rather than seeking purely to restrain any such departure from the existing circumstances.

Tall mature vegetation of varying deciduousness serves to screen views of the site from Desford Lane. Whilst a new vehicular access would be created to the south of the site, adequate visibility splays would be provided without the need to remove any vegetation either side of the access given and the depth of the highway verge. As such, the verdant and visually contained nature of the site would be maintained.

Notwithstanding the fact that the proposed dwelling would be largely visually contained, it would be harmonious in scale to the other dwellings along Desford Lane, namely Medworth, Newbridge Farm, and the newly erected dwelling to the south of Newbridge Farm, each of which being clearly visible from public vantage points along the highway. Furthermore, as is easily recognised, the architectural form of the proposed dwelling and stable block are of a high standard. Replacing an outdated and frankly tired dwelling, the proposed replacement would provide a substantial benefit to the appearance of the site. High quality materials would be used, and this could be secured by the Council by means of a suitably worded planning condition.

The curtilage of the existing dwelling would be used as fields for horse grazing, ensuring that the development would be in no way prejudicial to the viability of the existing equestrian business. Rather, the amended site layout would facilitate the operations of the business, to some economic and recreational benefit.

Whilst not yet instantiated by local planning policy, compliance with the Nationally Described Space Standards was identified as a key priority for the borough in the Council's Internal Space Standards Report 2021. The proposed dwelling would comfortably meet this Standard.

The existing dwelling has been in situ for a number of decades and is thus lacking in its environmental performance. As the provisions of the Building Regulations 2010 continue to be amended, the environmental performance of replacement dwellings improves accordingly, such as that which is proposed. For example, the most recent amendments came into effect in June 2022, including an updated Part B (fire safety), F (ventilation), and L (conservation of fuel and power). The proposed dwelling would be constructed pursuant to these Regulations, replacing an outdated and energy inefficient dwelling with a highly eco-friendly dwelling to the benefit of the environment. In locating the dwelling and stable block nearer to the southern boundary of the site, the dwelling could be connected to the main sewer on Desford Lane. As such, there would be no need for a sewage treatment plant, further facilitating energy conservation.

5. Providing suitable accommodation

Fundamental to the proposals is the pressing need to provide a suitable form of accommodation for the present and future care needs of the applicants' son, Barney. At 8 years old, Barney is the youngest of four children. At 18 months old, Barney was diagnosed with a rare genetic condition known as mucopolysaccharidosis type I, also known as Hurler Syndrome.

A multitude of reports from medical specialists can be made available to the case officer at their request. These have not been submitted with the application since the family does not wish to have these in the public domain.

Notwithstanding the severity of Hurler Syndrome under normal circumstances, Barney's diagnosis was delayed by approximately 11 months due to clinical negligence. Consequently, Barney's condition is on the severe end of the spectrum meaning that he suffers from a wide range of symptoms that seriously affect his general wellbeing and ability to perform even the most basic tasks. Barney is cognitively, visually and motor impaired, easily fatigued, doubly incontinent and suffers from carpal tunnel syndrome.

Turning first to Barney's nighttime care needs, he needs his nappy changed two to three times throughout the night and this is extremely difficult for the family. He also has sleep apnoea, thus requiring suction and very close monitoring throughout the night. Despite surgical interventions, Barney's carpal tunnel syndrome has resulted in his fingers

becoming permanently bent and thus he often wakes up crying from the pain in his hands, requiring extensive hand massages and stretches.

Barney also needs close supervision in the daytime. On a good day, Barney can only walk about 50 yards before becoming breathless and he struggles with his balance. He will eat only certain food at any one time, is slow to eat, and requires assistance in doing so. He is prone to unpredictable tantrums and outbursts associated with the constant pain in his hands. Owing to Barney's cognitive impairment, his ability to articulate his needs is hampered and thus it is often difficult for the family to understand Barney's needs at any given moment.

Considering the ophthalmic (eye-related) manifestations of Barney's condition, he suffers from bilateral corneal clouding, raised intraocular pressure and symptoms of nyctalopia suggesting the presence of retinopathy. With respect to Barney's bilateral corneal clouding, corneal transplantation can be considered (when the cloudy cornea is replaced by a clear corneal button from a donor eye). Corneal transplantation has been carried out successfully for patients with Hurler Syndrome, though the presence of retinopathy can limit the effectiveness of the procedure. Although corneal transplantation may improve the visual loss due to the corneal clouding, vision can still be affected by retinopathy. Retinopathy gradually worsens over time in individuals with Hurler Syndrome and can cause peripheral visual field loss and eventually central visual loss. Furthermore, Barney is at risk of developing glaucoma due to raised intraocular pressure. Barney's visual impairment influences his mobility, independence, communication, and tasks of everyday living and this will likely worsen with time.

Owing to the above, Barney requires round-the-clock care from qualified care staff. The existing dwelling does not provide the space, access and facilities required for Barney, his three siblings, Mr and Mrs McDonagh and the necessary care staff. Rather, it is straightforwardly unsuitable and redeveloping the existing plot enables the applicants a much greater degree of control over the functionality of the accommodation for Barney's benefit. Through extensive input into the proposals, the applicants have ensured that Barney's care requirements have been appropriately considered at every stage of the design process.

The rear garden and stables are currently inaccessible to Barney, thus to the detriment of his quality of life and mental health. As part of his ongoing treatment, Barney has been recommended hippotherapy owing to his love for horses. This is an equine-assisted physio-

therapeutic treatment aimed at providing motor and sensory input to the benefit of the patient. The redesign of the site layout has been designed with Barney's accessibility requirements in mind, ensuring that he can enjoy a good quality of life with access to outdoor recreational and therapeutic facilities. All parts of the proposed stable block and facilities are to be made as flat and level as possible, enabling easy access for Barney. The proposed rear garden would be provided with level access for Barney and situated adjacent to the grazing field such that he can relax whilst watching the horses grazing.

The proposed stable block would host accommodation for Barney's care staff, immediately adjacent to a therapy room where Barney would receive his daily treatment and general help with his care. This accommodation would be sufficient for two carers, to the significant benefit of Barney's day-to-day living. In providing suitable care at his home, Barney can be closely monitored at all times to ensure suitable medical interventions are provided when necessary.

Owing to Barney's motor impairment and oxygen requirements, he requires specialist vehicles to travel. The proposed garage would have high doors to accommodate the vans required for Barney's transport.

Barney would have a large bedroom adjoining his parents with a large access between to facilitate appropriate nighttime supervision and care. The spaciousness and layout of the rooms has been designed with the deteriorating nature of Barney's condition in mind, allowing for the provision of a lift at a later date. Barney would also benefit greatly from the proposed living area downstairs which would be attached to a wet room with full disabled access. Being prone to unpredictable outbursts associated with his condition, specialist treatments could be administered in a suitably equipped and private space without constantly removing Barney from his home.

The above facilities and provisions will only become more necessary as Barney's condition worsens with time. It is essential that these facilities and provisions are delivered in a timely manner to ensure that Barney's condition does not deteriorate beyond the pace at which could normally be expected.

With respect to the materiality of Barney's care needs in the determination of the application, in *Westminster City Council v Great Portland Estates plc* [1985], Lord Scarman commented that:

"Personal circumstances of the occupier [and] personal hardship [...] are not to be ignored in the administration of planning control. It would be inhuman pedantry to exclude from the control of our environment the human factor. The human factor is always present, of course, indirectly as the background to the consideration of the character of land use. It can, however, and sometimes should, be given direct effect as an exceptional or special circumstance".

The necessity to weigh up the "human factor" in the planning balance is underlined by the Council's statutory duties under the Equality Act 2010. Barney's care requirements are significant considerations which meet the 'relevant protected characteristics' under Section 149 of the Public Sector Equality Duty contained within the Equality Act 2010. In fulfilling its statutory duty under the Equality Act 2010, the Council must have due regard to Barney's condition in making its determination.

The weight to be afforded to the personal circumstances of the applicant is, of course, a matter of planning judgement. Indeed, such considerations are capable of straightforwardly outweighing conflict with the provisions of the development plan, though no such conflict is identified in this instance. Having due regard to the Council's statutory duties under the Equality Act 2010, Inspector Sarah Colebourne demonstrates as such in allowing an appeal against the decision of Newark and Sherwood District Council (APP/B3030/W/18/3209387):

"The personal circumstances and needs of the intended occupiers [...] have been clearly documented in the supporting statement provided with the planning application. These are significant considerations which meet the 'relevant protected characteristics' under Section 149 of the Public Sector Equality Duty contained in the Equality Act 2010 to which I must have due regard. If dismissed, the decision would have a serious negative impact on their day to day lives and their health. These important considerations significantly outweigh the harm that would be caused in terms of character".

To summarise, the proposed development would enable the necessary specialist care to be provided for Barney in a way which is simply not possible in the current dwelling. If the application were to be refused, there would be serious detrimental impacts on Barney's health and day-to-day living. It is evident that Barney's care requirements are a material consideration in the determination of the application and should be afforded substantial weight.

6. Summary

The application proposes to redesign the site layout and replace the outdated and tired dwelling with an architecturally inspired and environmentally friendly dwelling. In doing so, the rural and verdant context of the site would be respected whilst facilitating the operations of the existing equestrian business and providing suitable accommodation for the applicants' family. Having due regard to the legal principles laid down by the courts, it is deemed that the proposals accord with the development plan. Nonetheless, in determining the application, the "human factor" cannot be ignored. Substantial weight should be afforded to the care requirements of the applicants' son, Barney. Failure to do so would represent a failure to fulfil the Council's statutory duty under the Equality Act 2010 and would have serious consequences for the Barney's health and day-to-day living. With the deteriorating nature of Barney's condition and the substantial hardship that this causes for his family in mind, it is respectfully requested that the application is approved without delay.

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