

**12. S.73 APPLICATION FOR REMOVAL OF CONDITION 3 ON NP/SM/0103/008 AT MOORLANDS COTTAGE, SUNNYDALE FARM, PETHILLS LANE, QUARNFORD (NP/SM/0823/0904/PM)**

**APPLICANT: ESLAND NORTH LIMITED**

**Summary**

1. The application proposes the removal of a personal permission condition restricting operation of a children's home to two specific individuals.
2. The application effectively seeks to regularise the existing situation as the two individuals have had no involvement with the children's home for several years.
3. The removal of the condition would have no impact upon the form or scale of the development.
4. Other remaining conditions on the consent would allow for the Authority to retain control over the form and scale of the development.

**Site and Surroundings**

5. Sunnydale Farm is located in open countryside approximately 1 kilometre to the east of the A53 Buxton to Leek road.
6. The site constitutes an isolated building group which has been used as a children's home (C2 use) since the 1990s.
7. The building group comprises the original farmhouse (named Peak View); a detached residential annexe to the children's home (named Moorlands Cottage) and two outbuildings providing ancillary office and storage accommodation.
8. The building subject to this application is Moorlands Cottage.
9. The site is accessed via an unadopted track which runs for approximately 600 metres in length from the public highway (Pethills Lane). A public footpath passes through the site.
10. The site is located within an open upland landscape (Upland Pastures landscape character type). Land immediately to the south of the building group falls within the Natural Zone, the Leek Moors SSSI and the South Pennine Moors SPA.

**Proposal**

11. Planning permission is sought for the removal of condition 3 to planning permission NP/SM/0103/008 (Erection of residential accommodation and replacement of office building).
12. Condition 3 of NP/SM/0103/008 stipulates that "*The use hereby permitted shall be carried out only by Mr R W Sharp and Mr C Imrie and shall be discontinued on the date when Mr R W Sharp and Mr C Imrie ceases to occupy the premises*".

**RECOMMENDATION:**

**That the application be APPROVED subject to conditions covering the following:**

1. **The premises shall be used as a children's home/residential school/outdoor activity unit and for no other purpose (including any other purpose in Class C2).**
2. **The premises (Sunnydale Farm comprising Peak View and the annexe Moorlands Cottage) shall not be used for the accommodation of more than**

**six children at any time.**

**Key Issues**

13. Section 73 of the Town and Country Planning Act 1990, as amended (the 1990 Act), provides that any application may be made for planning permission without complying with conditions applied to a previous permission. This facilitates conditions to be struck out, or for their modification or relaxation. Equally, s.73 of the 1990 Act allows the Authority to decide whether to grant permission for the current application subject to different conditions imposed on the original permission, remove the conditions imposed on the original permission altogether, or refuse to alter the conditions.
14. The key issues for consideration are therefore the acceptability of the removal of condition 3 of planning permission reference NP/SM/0103/008 having regard to the possible impact upon the surrounding area of the removal of condition 3 including potential impact upon the character, appearance and landscape setting of the building group, residential amenity of neighbouring occupiers, highway safety, ecology, and climate change mitigation.

**Relevant Planning History**

15. 2022 - NP/SM/0722/0946 – Lawful Development Certificate for Existing Use as C2 - Residential institutions – Lawful Development Certificate refused.
16. 2003 – NP/SM/0103/008 - Erection of residential accommodation and replacement of office building - Planning permission granted.
17. 1996 – NP/SM/1096/095 - Change of use to children’s residential home/outdoor activity unit) – Planning permission granted.

**Consultations**

18. Parish Council – Objects on following grounds:
  - *Planning history of the site - Conditions were agreed when the planning application was agreed. Concerns that this will expand the business further.*
  - *Crime fears – Police are often called to disturbances which is a concern for the local residents.*
  - *Highway issues – Vehicles parking on neighbours’ land. An increase in business would likely increase the parking.*
  - *Noise and disturbance resulting from use – which can be in the middle of the night disturbing local residents.*
  - *Loss of privacy.*
19. Highway Authority – No objection
20. District Council – No response to date.
21. PDNPA Archaeology – No objection.
22. PDNPA Public Rights of Way – No response to date.

## **Representations**

23. Objection letters have been received from 4 nearby occupiers.

The summarised grounds of objection are:

- Residents regularly abscond onto neighbours' land and property.
- Disturbance and distress from police activity as escaped residents are searched for at all times of day and night.
- Inconsiderate parking on access track / neighbours' land impacting upon ability of neighbours to undertake activities including farming and gritting of the nearby A53.
- Anti social behaviour including vandalism to neighbouring property by escaped residents and cars travelling at excessive speed on access track causing a hazard for neighbours.
- The site is not a particularly safe place to accommodate the children with emotional and behavioural problems. The track can be inaccessible in winter and during one period of bad weather the children were moved into hotels until the winter had passed for their own safety.
- The site is not suitable for a children's home with focus on outdoor activities due to the protected nature of nearby land (SSSI etc).
- The site has been unoccupied in recent years so the statement that no residents have escaped in 3 years prior to recent escape is misleading as the children's home was not operational.

## **Main Policies**

24. Relevant Core Strategy policies: GSP1, GSP2, GSP3, DS1, E2, L1, L2, CC1

25. Relevant Development Management policies: DMC3, DMC12

## **National Planning Policy Framework**

26. The National Planning Policy Framework (NPPF) was published on 27 March 2012 and replaced a significant proportion of central government planning policy with immediate effect. It was last revised and re-published in September 2023. The Government's intention is that the document should be considered as a material consideration and carry particular weight where a development plan is absent, silent or relevant policies are out of date.

27. In the National Park the development plan comprises the Authority's Core Strategy 2011 and the Development Management Policies document 2019. Policies in the Development Plan provide a clear starting point consistent with the National Park's statutory purposes for the determination of this application. It is considered that in this case there is no significant conflict between prevailing policies in the Development Plan and more recent Government guidance in the NPPF.

28. Paragraph 176 of the NPPF states that 'great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. The conservation of wildlife and cultural heritage are important considerations in all these areas, and should be given great weight in National Parks and the Broads.'

29. Section 16 of the revised NPPF sets out guidance for conserving the historic environment.

### Peak District National Park Core Strategy

30. DS1 – *Development Strategy* sets out the Development Strategy for the National Park and supports development of small-scale retail and business premises, in Bakewell, in principle, so long as the designs comply with the National Park Core Strategies and Design Management Policies.
31. GSP1 and GSP2 – *Securing National Park Purposes and sustainable development & Enhancing the National Park*. These policies jointly seek to secure national park legal purposes and duties through the conversion and enhancement of the National Park's landscape and its natural and heritage assets.
32. GSP3 – *Development Management Principles* requires that particular attention is paid to the impact on the character and setting of buildings and that the design is in accord with the Authority's Design Guide and development is appropriate to the character and appearance of the National Park.
33. E2 – *Businesses in the Countryside* – Sets out principles for business development in the countryside outside of the Natural Zone. Businesses should be located in existing traditional buildings of historic or vernacular merit in smaller settlements, on farmsteads, and in groups of buildings in sustainable locations.
34. L1 – *Landscape character and valued characteristics* - says that development must conserve and enhance valued landscape character, as identified in the Landscape Strategy and Action Plan, and other valued characteristics.
35. L2 – *Site of biodiversity or geodiversity importance* - says that development must conserve or enhance any sites, features or species of biodiversity or geodiversity importance and where appropriate their setting. Other than in exceptional circumstances development will not be permitted where it is likely to have an adverse impact on any sites, features or species of biodiversity or geodiversity importance.
36. CC1 – *Climate change mitigation and adaption* sets out that development must make the most efficient and sustainable use of land, buildings and natural resources. Development must also achieve the highest possible standards of carbon reductions.

### Development Management Policies

37. DMC3 – *Siting, Design, layout and landscaping* states that where developments are acceptable in principle, policy requires that design is to high standards and where possible enhances the natural beauty, quality and visual amenity of the landscape. The siting, mass, scale, height, design, building materials should all be appropriate to the context. Accessibility of the development should also be a key consideration.
38. DMC12 – *Sites, features or species of wildlife, geological or geomorphological importance* - requires development to conserve protected sites, features and species

### Assessment

#### Background

39. Planning permission was granted in 2003 for a residential annexe to the existing children's home at the site.
40. The applicant's agent advises that the children's home was operated by Mr Sharp and Mr Imrie as sole operators until 2001 (in accordance with condition 4 of planning permission reference NP/SM/1096/095).

41. In 2001, Mr Sharp and Mr Imrie set up a company entitled Inspiring the Next Generation Limited to run the children's home. Mr Sharp and Mr Imrie were appointed as sole directors. Mr Imrie served as a director of the Company until 21 December 2006. Mr Sharp served as a director of the Company until 31 July 2011.
42. In 2013 the company was renamed from Inspiring the Next Generation Limited to Esland North Limited.
43. The applicant's agent observes that technically there has been a breach of condition 4 of planning permission reference NP/SM/1096/095 since 2001 (and condition 3 of planning permission reference NP/SM/0103/008 since 2003) as the property has not been "occupied" by Mr Sharp and Mr Imrie as sole operators since 2001. The applicant's agent observes that notwithstanding any technical breach of conditions, the use of the property continues to be carried out within the broader aim of the personal permission conditions as the same corporate entity (renamed) set up by Mr Sharp and Mr Imrie in 2001 continues to occupy the property and operate the children's home.
44. However, the officer report for the refusal of the Lawful Development Certificate in 2022 (ref NP/SM/0722/0946) concluded that "*it was more than likely than not that the breach of condition is not yet immune from enforcement action and therefore not lawful*". The officer report stated that there was no conclusive evidence as to when the breach of the personal permission conditions first commenced and therefore it was not possible to be certain that the 10 year period for immunity from enforcement action had been passed. It is not within the remit of this current planning application to revisit these issues and provide a judgement on whether the operation of the children's home at the site in breach of the personal permission conditions is immune from enforcement action. However, for the purposes of this planning application it can be acknowledged that the children's home has operated from the site without the involvement of Mr Sharp or Mr Imrie for several years.

Acceptability of removal of condition 3 of planning permission reference NP/SM/0103/008

45. It is necessary to consider the reason why condition 3 was placed onto the 2003 consent. The reason for the condition on the decision notice is "*Permission has been granted as an exception to the National Park Authority's normal policy because of the applicant's personal circumstances. The Authority therefore wishes to retain control over the form and scale of development to protect the character of the locality.*"
46. For the avoidance of doubt it should be stated that the decision notice from 2003 has a different reason for condition for condition 3. However, it would appear that the reasons for conditions 3 and 4 were transposed. The reason for condition outlined in the paragraph above as the reason for condition 3 would be consistent with the reason for the personal permission condition on planning permission reference NP/SM/1096/095. The applicant's agent agrees with this interpretation of the 2003 decision notice.
47. The officer reports to planning committee recommending approval of the 1996 and 2003 proposals do not explicitly state why the proposal was an exception to normal policy. The officer report for the 1996 proposal does emphasise that the proposed children's home was not intended to be a children's home in the traditional sense and would offer short stay placement with an outdoor activity focus. It is therefore likely that weight was given to the specific proposed operating model of the children's home in concluding that the remote location of the proposal was acceptable for such a use. In 2003 it was necessary for the condition controlling the use of the children's home residential annexe to be consistent with the conditions on the earlier consent for the children's home in the original property. As such the requirement for the use to only be carried out by Mr Sharp and Mr Imrie was replicated onto the 2003 consent for the annexe building.

48. The reason for condition 3 refers to the authority wanting “to retain control over the form and scale of the development.” It is noted that condition 2 of the consent controls the form of the development and condition 4 of the consent controls the scale of the development and therefore the use of condition 3 to restrict the use to operation by Mr Sharp and Mr Imrie does appear to have been superfluous, although was likely included in 2003 to be consistent with the approach taken with the other building within the site in the 1990s.
49. It can therefore be concluded that removal of condition 3 from planning permission reference NP/SM/0103/008 would not prevent the Authority from controlling the form or scale of the children’s home operation at the site as condition 2 relating to the form of development within the C2 use class (children’s home / outdoor activity unit) and condition 4 relating to the scale of development (no more than 6 children at any time) would remain.
50. The removal of condition 3 essentially regularises the existing situation whereby the site has not been run by Mr Sharpe or Mr Imrie for several years.
51. The applicant’s agent has confirmed that “the main focus of the facility continues to be as an outdoor activity centre” as it was when the children’s home opened in the late 1990s. The home operates by providing short term placements (up to 12 weeks) as it did when operations began. The site has an outdoor activities licence through the Adventure Activities Licensing Authority (AALA). This enables the home to offer and run activities such as rock climbing, mountain biking, abseiling, kayaking, paddle boarding and bush craft skills. Each child attends two or three of these activities each week. Whilst it is acknowledged that several of these activities take place off site, the site is connected to the local public footpath network providing access to nearby remote countryside and overall the location of the site in the Staffordshire Moorlands facilitates easy access to opportunities for the aforementioned outdoor activities. It is considered that the current operation falls within the parameters of the 1996 application description of combined children’s home / outdoor activity unit.
52. There would be no intensification of operation at the site and no change in the character of operations as a result of this application. Any future increase in number of children at the site would require a further planning application to vary condition 4. Any change in the operating model away from an outdoor pursuits focused operating model would require a further planning application to vary condition 2 which restricts the use at the site to a combined children’s home and outdoor activity unit.
53. The objections received from the Parish Council and the neighbouring occupiers have been considered in full. Overall, the comments received either raise concern about an intensification of operations at the site, which is not proposed and which the removal of condition 4 would not facilitate in any case, or highlight recent or historical incidents of anti social behaviour or disturbance to nearby residents. The children’s home operation at the site is long standing and the purpose of this application is not to consider the acceptability of a children’s home operation at the site, but rather the narrower consideration of the acceptability of the removal of condition 3 from the consent. Moreover, issues relating to the protection and safety of children and the effectiveness of managers and staff, are not material planning considerations. An Ofsted Inspection considering such issues carried out in April 2023 rated the home as ‘Good’ in all categories.
54. As this is a section 73 planning application it effectively issues a stand-alone planning permission. Therefore, the remaining conditions attached to planning permission reference NP/SM/0103/008 must also be reconsidered to establish whether they are still necessary.

55. Condition 1 related to the time period for commencement. As the use has commenced this is no longer necessary. As outlined above, conditions 2 and 4 of NP/SM/0103/008 are necessary on the new planning permission to control the form and scale of the development. Condition 5, 6 and 7 related to the construction of the residential annexe. The residential annexe is now built and therefore conditions 5, 6 and 7 are not necessary on the new consent.

### **Conclusion**

56. Overall, as the proposed removal of condition 3 of planning permission reference NP/SM/0103/008 would not alter the intensity or character of operations at the site, there would be no impact upon the appearance and landscape setting of the building group, the residential amenity of neighbouring occupiers, highway safety, or ecology or a requirement for climate change mitigation. The proposal accords with policies DS1, GSP1, GSP2, GSP3, E2, L1 and L2, CC1, DMC3 and DMC12.

### **Human Rights**

Any human rights issues have been considered and addressed in the preparation of this report.

### **List of Background Papers** (not previously published)

Nil

Report Author: Peter Mansbridge – Planner (South Area).