
GSP PROJECT REF: [3926.PN](#)

PLANNING STATEMENT

STARWOOD, PEARTREE LANE, SHORNE, DA12 3JU

SEPTEMBER 2023

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REVISED APPLICATION DOCUMENTS

Condition 2: 3926/01 to replace drawing 1273/7A

1.0 INTRODUCTION

1.1 This Statement is prepared in support of the following:

Application for variation of condition 2 of planning permission 20050912 in order to allow use of detached garage as an annexe in connection with main dwellinghouse

1.2 The development affects the following Land Registry titles, with notice being served on the owners of the first title, and the second title being owned by the applicant:

- K654169 (described as land adjoining Starwood), and;
- K424735 (described as Starwood).

2.0 SITE CONTEXT

2.1 The existing Starwood curtilage (hereafter referred to as ‘the Site’) comprises a large detached property on the northern side of Peartree Lane set within a 0.6 hectare plot of land. Land within the family’s ownership extends to another 10.2 hectares, inclusive of a 7 hectare woodland and 2.2 hectare paddock.

2.2 The existing dwelling is set back by a minimum of 50m from the highway and benefits from two vehicular accesses. One was recently constructed in 2018, as per planning permission 20171122, to provide a separate and direct access to the stable, tack room, feed store and storage containers that currently exist within the rear part of the recently lawfully certified garden that serves Starwood (see application reference 20210376). There is a concrete framed barn towards the far end of the Site that was the subject of a recently issued certificate of lawfulness (see application reference 20230491). This confirms the incidental nature of the structure and the fact that it has been present for longer than four years.

2.3 The subject outbuilding is located along the eastern boundary of the Site a few metres forward of the main front elevation of the dwelling and features two small dormer windows in each of the north and south elevations. A garage exists at the ground floor whilst a separate door in the northern elevation leads to an internal staircase and a first floor that currently comprises a hobby room.

2.4 Being entirely residential land not located within a built-up area, this means that the Site is entirely previously developed. The Site is outside of the rural settlement of Shorne. The existing built form is part of a ribbon of housing along Pear Tree Lane to the south, all set within generous plots of previously developed land.

3.0 PLANNING HISTORY

3.1 The following planning permissions are considered relevant to this particular application and relate solely to the subject detached outbuilding:

- [Alterations and additions to provide additional living accommodation and erection of a detached garage](#)

Ref. No: 19750472 | Status: Application Permitted

- [Variation of condition \(iii\) of planning permission reference number GR/75/472 for erection of a detached garage; to allow the store in the roof space above the garage to be used as a hobby room and construction of dormer extensions in both side roof slopes of garage to provide enlarged roofspace for the hobby room/store.](#)

Ref. No: 20050912 | Status: Application Permitted

4.0 PROPOSED VARIATION

- 4.1 This application proposes to vary condition 2 of planning permission 20050912 that in itself allowed a variation of condition (iii) of planning permission reference number GR/75/472 that involved the erection of a detached garage, to allow the store in the roof space above the garage to be used as a hobby room and construction of dormer extensions in both side roof slopes of the garage to provide enlarged roofspace for the hobby room and store.
- 4.2 A variation to this condition is necessary to secure minor internal amendments to the previously approved and modified detached garage, and in particular the inclusion of a toilet, shower and sink and a bedroom in place of an existing hobby room. The resultant first floor space is to be used as annexe accommodation incidental to the dwellinghouse, whilst the use at the ground floor will continue to be as previously approved for the parking of vehicles.
- 4.3 No new built form is proposed nor is there to be a material change in the use of the existing building. Permission is only required to the following restrictive condition, otherwise, such changes would be deemed ‘permitted development.’
- 4.4 Condition 2, as previously approved, states as follows:

(2) The building hereby permitted shall be used as a hobby room/store for the residential occupants of Starwood House, the building shall not, at any time, contain any living accommodation and no trade or business shall be carried on therefrom.

Reason: In order that any other uses of the building may be the subject of a separate planning application which the District Planning Authority may wish to consider in its merits.

5.0 PLANNING POLICY

- 5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 require that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Court of Appeal has clarified that for a decision maker this means establishing whether a proposal is in accordance with the development plan as a whole. The question of compliance with one policy should not dictate the outcome of a proposal in the absence of considering compliance with all other relevant policies. Decision makers are therefore tasked with identifying and

understanding all relevant policies and material considerations in order to reach a properly informed planning judgment on a proposal, and to avoid an irrational or vulnerable decision that may be subject to criticism in a public law challenge.

- 5.2 Paragraph 2 of the National Planning Policy Framework ('the Framework') reiterates what is said in Section 38(6), whilst paragraph 12 of the Framework is clear that the development plan is the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise.
- 5.3 Paragraph 38 of the Framework encourages local planning authorities to approach decisions on proposed development in a positive and creative way. It also encourages working proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area, adding that decision-makers should seek to approve applications for sustainable development where possible.
- 5.4 Annex 1 of the Framework confirms that for the purposes of decision-taking, the policies in the plan should not be considered out-of-date simply because they were adopted prior to the publication of the Framework. It adds that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework, with greater weight being given to those policies that are closer to the policies in the Framework.

Development Plan

- 5.5 The Development Plan for the area within which the application site is located comprises the Gravesham Local Plan Core Strategy (CS) (adopted September 2014) and the Saved Policies of the Gravesham Local Plan First Review (LPFR) (adopted November 1994).
- 5.6 Relevant Development Plan policies in the CS include:
- CS01: Sustainable Development;
 - CS02: Scale and Distribution of Development (Green Belt);
 - CS19: Development and Design Principles.
- 5.7 Relevant Development Plan policies in the LPFR include:
- T4: Development Outside the Built-up Area;

Other Material Considerations

The Framework

- 5.13 Paragraph 134 states that "development that is not well designed should be refused."

6.0 PLANNING ASSESSMENT

- 6.1 Given the above policy considerations and the nature of this type of application, it is considered appropriate to: (1) firstly decide whether the proposed variations constitute a minor material amendment and can be the subject of a further planning permission under section 73 of the Town and Country Planning Act 1990 (as amended), and then (2) assess whether the proposed variation is acceptable.

(1) Does the proposal fall within the parameters of a Section 73 application?

- 6.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004, Section 70(2) of the 1990 Act and paragraph 47 of the Framework require that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. In this case the development plan comprises the adopted CS and LPFR.
- 6.3 Planning permission was granted on 15 December 2005 for the “Variation of condition (iii) of planning permission reference number GR/75/472 for erection of a detached garage, to allow the store in the roof space above the garage to be used as a hobby room and construction of dormer extensions in both side roof slopes of garage to provide enlarged roofspace for the hobby room/store”.
- 6.4 The first matter to consider in the determination of this particular application is whether the proposed changes can be dealt with by way of an application under section 73 of the Town and Country Planning Act 1990 (as amended) or whether a fresh application is required.
- 6.5 Lord Justice Lewison in a recent court judgment in the Court of Appeal between John Leslie Finney and Welsh Ministers, Carmarthenshire County Council and ‘Section 73 application stated that “On receipt of such an application section 73 (2) says that the planning authority must "consider only the question of conditions". It must not, therefore, consider the description of the development to which the conditions are attached. The natural inference from that imperative is that the planning authority cannot use section 73 to change the description of the development. It is notable, however, that if the planning authority considers that the conditions should not be altered, it may not grant permission with an altered description but subject to the same conditions. On the contrary it is required by section 73 (2) (b) to refuse the application. That requirement emphasises the underlying philosophy of section 73 (2) that it is only the conditions that matter.”
- 6.6 The above judgement has been further endorsed recently in the case of *Armstrong v Secretary of State for Levelling-Up, Housing and Communities & Anor* [2023] EWHC 142 where the High Court stated that “section 73 is clearly intended to be a provision which enables a developer to make a section 73 application to remove or vary a condition, provided of course that the application does not conflict with the operative part of the planning permission”.

- 6.7 On the basis of the above judgements, it is clear that permission for a Section 73 application shall only be granted for the same development and any variation shall only relate to the conditions imposed to the original permission.
- 6.8 The description of the originally approved development from 1975 clearly outlines that the development would involve the erection of a detached garage, which is replicated in the description for the 2005 variation. The proposed amendments do not deviate from this. Use of the first floor in a different manner, but without resulting in a material change of use, would ensure the amendments remain entirely consistent with that description. Similarly, the detached outbuilding will remain in use as a garage, certainly at the ground floor, with only incidental uses for the first floor, akin to the 2005 variation.
- 6.9 Overall the proposed changes would not necessitate a change to the description of the originally approved development. Consequently, the variations do only relate to conditions imposed to the original permission and relate to the same development. As such, GBC is in a position to be able to legally grant the proposed changes under a S73 application as they do not necessitate any alterations to the description of a development.
- 6.10 If GBC is of a different opinion the applicant would welcome a discussion relating to this in advance of issuing a refusal.

(2) Suitability of the Proposed Changes

Use of floorspace

- 6.11 The previously approved ground floor incidental garage is to remain, and an annexe will be created at the first floor comprising a bedroom and bathroom. This is an insufficient range of facilities that would enable the first floor of the subject detached garage to be used as an independent dwelling. The use of the first floor will therefore remain incidental to the previously approved detached house from 1960, with nothing changing in respect of the primary use of the subject garage or the surrounding land.
- 6.12 As such, there should be no concerns with the alternations to the floor plans, although the applicant does expect an additional condition to ensure that the use of the outbuilding remains incidental to the dwellinghouse.

7.0 CONCLUSIONS

- 7.1 The applicants respectfully request that GBC attaches appropriate weight to all relevant policies and material considerations and come to the view that the proposed revised first floor layout within the existing detached garage are, on balance and taking account of the extant permission, in accordance with the development plan as a whole and can be approved under section 73 of the Town and Country Planning Act 1990 (as amended).