

Planning Statement

**Section 73 application for variation of condition
7 of planning permission 93NP0009 to allow
year-round holiday occupancy only of lodge 23b**

**Otterburn Hall Estate, Otterburn, Newcastle
upon Tyne, NE19 1HE**

**Prepared by
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**On behalf of
Lodge Owners**

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Introduction

- 1.1 This statement is prepared as part of a section 73 application relating to lodge 23b at Otterburn Hall, Otterburn. This statement is provided in order to provide clarity in relation to the occupancy condition proposed for this lodge and how this relates to other variation applications within the site. This application has now been identified as required to vary one of the original permissions on the site. An application to this effect relating to 15 lodges on the site ref 18/NP/0129 has already been determined by the Authority. At the time of submission of that application the planning history for this particular lodge was not known. It has now become clear that the lodge, as built, is pursuant to what are referred to in other applications as the 'old permission'. Accordingly, an application for variation of the 1993 permission is now also being made in respect of lodge 23b. This statement will also provide further information in relation to the context of this application within the wider lodge site and more recent permissions relating to lodges outwith this original planning permission.

Site History

- 1.2 The section 73 application to vary the occupancy condition relates to planning permission 93NP0009. This is a permission which intern relates to the original permission for development of this site which dates from 1988 ref 87E419. That permission originally granted consent for the siting of 13 static caravans and 22 chalets at Otterburn Hall, Otterburn as amended by a plan submitted on 26 January 1988. That permission included a condition (condition 7) which stated that:

'The static caravan and chalet units here approved, shall not be regularly occupied between 1st November in one year and 1st March in the following year'

That condition was subsequently varied through a 1993 permission which was 93NP0009. That approval put in place a revised condition 7 which stated that:

'The chalet units here approved shall not be occupied for any purpose between 15 January and 15 February in any year'

This is the occupancy condition which chalets which were developed under that original 1987 permission have been operated.

- 1.3 In reviewing this original permission further, it is noted that a limited number of the consented chalets were developed under that original permission. Of the original consented 35 chalets, 19 can now be identified to have been developed under the auspices of that original permission (at the time of submission of application 18/NP/0129 it was understood that 18 chalets had been developed under that original permission due to the omission of lodge 23b). These chalets are referred to as being developed under the 'old permission' are predominately located within a single group at the north west corner of the site albeit that this lodge, 23b is separate from these being located at the north east corner of the site. The other 16 constructed lodges on the site have been developed under new applications which have superseded the original old consent which existed over this area.

[Background to the Application](#)

- 1.4 The application is brought forward in order to vary the existing occupancy condition in relation to lodge 23b which has been developed under the old permission. The reason for the application being made has arisen due to the lodge owner seeking greater flexibility in order to allow year-round holiday occupation of their lodge. It is important to note that the existing occupancy condition put in place by permission 93/NP0009 did not in fact limit the lodges to holiday occupation only. The condition under which lodge 23b actually operates is one which allows the use of the lodge as a residential dwelling or second home albeit that the lodge should not be occupied as a primary residential dwelling. The purpose of the original and amended 1993 condition in incorporating a required break in occupancy was to ensure that the lodges could not be occupied on a year-round basis and therefore function as unfettered residential dwellings. In reality however, the condition does allow for owners to occupy their lodges continuously for a period of 11 months.

- 1.5 The issue of the requirement for a one-month cessation of occupancy and the ambiguity of what this means, has been brought into focus due to the fact that the owner of lodge 23b in line with most of the other lodges on site, simply operate as holiday properties which are rented out on a weekend or weekly basis. The ability to be able to occupy the lodges as dwellings for a period of 11 months has therefore ceased to be of any value or interest to these owners and instead the ability to rent out their lodges as holiday accommodation during the current one-month non-occupancy period has become more important to them. Notwithstanding that many people would view a relatively unrestricted second home/dwelling condition as currently exists, as a more favourable and valuable position for owners to have, the situation is that the owner of lodge 23b has now concluded it would be better for their purposes to forgo the value of the existing condition and therefore to actively apply for what must be considered to be a more restrictive year round holiday condition. In simple terms this now better fits with how the lodge is being used. It is in this context therefore that the application is being made and why consent is sought for the replacement of the original occupancy condition with a new up to date holiday occupancy condition.

Proposed Wording of Varied Occupancy Condition

- 1.6 Any section 73 variation application requires an applicant to propose wording for the condition that they seek to be put in place as a replacement for the condition in question. It can be noted however that an LPA can, with the agreement of the applicant in any application propose an amended worded condition if, through this amendment, it addresses any concerns in respect of the proposed wording whilst still maintaining the purpose of the applicant's submission.
- 1.7 In this application the details of the proposed wording are relatively straight forward. For the avoidance of doubt, it can therefore be stated that this application proposes the replacement of the existing condition 7 wording of:

'The chalet units hereby approved shall not be occupied for any purpose between 15 January and 15 February in any year'.

- 1.8 The new occupancy condition wording which will relate to the 'old permission' lodges will therefore be as follows:

'The chalet hereby approved relates to the provision of short term accommodation only and shall not be used at any time as permanent residential accommodation. Occupiers of the approved accommodation shall occupy this for holiday purposes only and shall not occupy this as their sole or main place of residents, or as a second home. The operators shall maintain an up to date register of the names of all occupiers of the holiday accommodation hereby approved and of their main home addresses and shall make this information available at all reasonable times to the Local Planning Authority.'

Parallel Application Proposals

- 1.9 As a context for the above proposals, it is also worth noting that applications have been made for the variation of occupancy conditions for 15 further lodges under the 'old permission'. In addition to this, applications have also been made to vary the conditions relating to lodges constructed under more recent planning consents. These permissions contain a similarly worded occupancy condition, albeit with reference to holiday use only. These conditions do not however provide any reference to the necessity to keep records etc. therefore applications are also being made to vary the occupancy conditions relating to these later permissions. This will ensure that the entirety of the site with the exception of the 3 lodges referred to in application 18/NP/0129, will then be placed on up to date modern holiday conditions.

Assessment of Proposed Variation

- 1.10 Consideration of the proposed condition in question has recently been undertaken by the LPA as part of a recent application reference 18NP0071. Although the proposed wording of the replacement condition in that case with reference to lodge 5 was different, the decision on that application has been helpful in highlighting the issues that any section 73 proposal of this type would have to address. In looking at the acceptability of the proposal, it is necessary therefore to consider both the principle of what is proposed with reference to the revised wording and second whether the revised proposed

condition would fit with the tests of a condition as prescribed by paragraph 55 of the NPPF.

1.11 In relation to the new proposed wording for the condition in respect of lodge 23b, there are two main points for consideration. The first is that it must be recognised that the revised condition does not materially change the land use of the site or the lodge. Under the terms of the existing condition it is clearly the case that the lodge in question can either be used as second homes or dwellings for up to 11 months per year or they may be used for holiday letting on a weekend and weekly basis as is actually the case. What the proposed condition does in effect, is simply formalise the restrictions of occupancy in a more narrowly framed manner, which going forward would be specific to short term holiday use only. The revised condition would in effect remove the ability for the lodge to be occupied as dwellings up to 11 months per year or as second homes. In this respect, the condition does put in place a much greater restriction on the type of occupancy that may be conducted within the lodge.

1.12 The other main change is that clearly the revised condition does allow use of the lodges on a year-round basis rather than for the 11 months currently allowed. It is important to note however that the purpose of that no occupancy period was purely and solely to ensure that lodge could not be occupied as primary residential dwellings. The break which was put in place in both the original and amended condition from 1993 simply ensured that this could not be the case. By virtue of the revised condition, restricting it to holiday use only, this position is actually maintained going forward. Therefore, the loss of the 1-month non-occupancy period has no material effect in relation to removing any aspect of control that the original condition put in place. On the contrary, as detailed, the revised condition actually puts a much greater restriction in place and removes what is in effect a far more unfettered occupancy condition. The other point which must be made in this respect and which was raised within the application on lodge 5 earlier this year, is that the applicants for the lodges affected by this application are fully aware of the implications of the condition that they are now seeking. Within the assessment of the lodge 5 variation application earlier this year, it was noted that the LPA expressed concern that it was not within the power of the LPA to potentially impose a much more restrictive condition, which took away

significant elements of occupancy available to applicants, without the applicant's consent. This matter has been fully discussed with the applicant and the parallel applications and for the reasons stated in the introduction, all are satisfied and content that they are willing to forego some of the freedoms which the current occupancy condition provides, in favour of the more restrictive holiday condition now proposed. It is therefore the case that the LPA can vary the condition in the manner proposed.

1.13 In relation to the impact of the proposals it can be seen that in reality there would be no change in the impact of the operation of the site given that it already effectively operates for holiday purposes anyway. The condition as proposed would also deliver significant benefits to the LPA in terms of delivering uniformity and enforceability over the site in a manner which currently does not exist. In particular, the compliance with the conditions could be monitored much more easily by reference to the records which would have to be kept of occupancy as required by the condition. The lodges in question are all rented on a professional basis with full records kept by either the owners or their letting agents and in this respect records of occupancy in line with the condition could much more easily be obtained. At present, this facility does not exist under the terms of the current conditions. It is considered that the introduction of this uniformity over the majority of the lodges, including lodge 23, in the form of an up to date and modern condition is a significant benefit to the LPA which must be afforded weight in the consideration of the application.

1.14 Turning to the tests as prescribed in the NPPF, it can be seen that the revised worded condition as proposed complies with all of the 6 tests. These 6 tests are that the condition is:

- 1) necessary;
- 2) relevant to planning and;
- 3) to the development to be permitted;
- 4) enforceable;
- 5) precise;
- 6) reasonable in all other respects.

1.15 It can be seen that the condition as now proposed is clearly necessary in order to ensure that the lodges are not occupied as primary residential dwellings. The condition is clearly relevant to planning and this is reflected in the fact that occupancy conditions have always been imposed on this site and continue to be of relevance to this form of development in this type of location. This assessment also applies to test 3. In relation to test 4 and the enforceability of the condition, as detailed the condition wording in its amended form is based on a modern and up to date holiday occupancy condition which is already used by the LPA. That wording in itself is also of a standardised type which can be found applied to holiday accommodation throughout the country. It is also a condition which is regularly used by Inspectors within planning appeals. As such the wording of the condition is one which is established and is clearly rigorous and enforceable, particularly with regard to the requirement for records of occupation to be kept and made available to the LPA. Given the standardised nature of the revised wording it is considered to be clearly the case that the condition is enforceable. The condition as proposed is also precise, both in relation to its content and the lodges to which it relates. The wording as detailed above is very standardised and therefore given its widespread use must be considered to be of sufficient precision to avoid any potential ambiguity. Finally, it is considered that the condition is reasonable in all other respects and specifically with regard to the fact that it does impose what may be considered more onerous requirements on the owners of the lodge. As detailed, the owner of the lodge is fully aware of the implications of this varied condition and as such have accepted the condition would be worded in this form by virtue of the fact that they make in the application in the form proposed. It is therefore considered that the proposed condition does fully meet the test.

Conclusion

1.16 This statement has set out the details of the application site and the lodge to which this application relates. This statement has provided a context for the assessment of the application by reference to the planning history and also the purpose of the revised occupancy condition now being brought forward. It is considered that the proposal delivers benefits to both the applicant and also the LPA in respect of bringing forward modern up to date and enforceable conditions for the majority of the site. The proposed condition fully maintains

any restrictions which exist at present in relation to preventing occupancy of lodges as prime residential dwellings whilst also delivering workable modern conditions which fit with the manner in which the majority of the lodges are being operated. We therefore consider that the proposal is fully compliant with relevant core strategy and NPPF policy and would therefore request that the condition is varied in the terms set out.