Planning Statement

For
Thorsdene
Ridehalgh Lane, Briercliffe

Proposed erection of a replacement dwelling
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<td>Date issued:</td>
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1. Introduction

1.1 This planning statement has been prepared to support the submission of an application for planning permission for the erection of a replacement dwelling at Thorsdene, Ridehalgh Lane, in Briercliffe.
2. Description of site and proposed development

2.1 The site is located to the north of Ridehalgh Lane, adjacent to Braeside. The site presently contains a log cabin that has been in residential use previously. The log cabin is in a state of disrepair although with some internal repairs could be brought back in habitable use.

2.2 The development proposed is the demolition of the existing log cabin and the erection of a replacement dwelling.
3. Planning History

3.1 The site history for the land and buildings is as follows

<table>
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<tr>
<th>Application Number</th>
<th>Proposal</th>
<th>Decision</th>
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<tr>
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<td><strong>Braeside</strong></td>
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<td>12/76/0046</td>
<td>Siting of residential caravan</td>
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4. Planning Policy Considerations

4.1 The policy framework in Burnley consists of the National Planning Policy Framework (NPPF), and the Burnley Local Plan (adopted 2006).

4.2 This site is located within the rural area as designated in the Burnley Local Plan Proposals map.

4.3 The National Planning Policy Framework has a presumption in favour of sustainable development and emphasises the need to meet development needs through plans and the need for local planning authorities to plan positively where proposals are in line with local plans.

4.4 The NPPF states that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:

- the essential need for a rural worker to live permanently at or near their place of work in the countryside; or
- where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or
- where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or
- the exceptional quality or innovative nature of the design of the dwelling.

4.5 The relevant Burnley Local Plan Policies are Policy GP2: Development in rural areas, Policy H2: The sequential release of further housing land for development, Policy E27 Landscape character and local distinctiveness in rural areas and Green Belt and Policy E2 Nature conservation.

4.6 Policy GP 2 states that

Development in the rural areas, shown on the Proposals Map, will be limited to the following:

(a) agriculture, forestry and outdoor recreational uses not requiring large buildings;
(b) re-use of existing buildings providing that the building is capable of re-use without complete or major reconstruction and such re-use does not have an adverse effect on the rural
economy, or a materially greater impact on the rural environment than the existing development;
(c) the use of infill sites (small gaps in an otherwise built-up frontage), within named rural settlements;
(d) or proposals which contribute to the solution of a particular local housing, social, community or employment problem within named rural settlements; and
(e) other uses appropriate to a rural area, including those which help diversify the rural economy, while being in keeping with the rural environment, see Policies Economy and Work Policy EW11 and Environment Policy E30.

The named rural settlements to which criteria c) and d) apply are set out in the justification to this policy.

All new development will have to be in scale and keeping with the surrounding landscape, to have no negative impact on biological or ecological features of value, and to be consistent with other policies and proposals of the Burnley Local Plan.

4.7 Policy H2 The sequential release of further housing land for development states

The Council will ensure that brownfield land is redeveloped for housing before greenfield development takes place. Within the Urban Boundary the Council will permit development for housing on brownfield sites not allocated in Policy H1 when the following criteria can be met:

(a) the development would convert or reuse a building or bring back into use previously developed land;
(b) that release of the site or building for housing would not lead to an unacceptable oversupply of housing when assessed against Policy H1 of the Burnley Local Plan;
(c) the proposal is within easy reach of local facilities and services and is well served, or potentially well served by public transport; and
(d) the proposal satisfies the criteria set out in General Policy GP1: “Development within the urban boundary” and General Policy GP3: “Design and quality” of the Burnley Local Plan.

Greenfield sites will only be released when completions, brownfield allocations (including any sites allocated in subsequent reviews of Policy H1 of the Burnley Local Plan) and brownfield windfalls cannot meet five year’s housing provision as identified in the Lancashire Structure Plan.
In addition, greenfield sites will only be released when they can meet criteria c) to d) above.

The Council will implement this policy at a sub-regional level, with other district and unitary authorities in East Lancashire to ensure that the release of greenfield land does not undermine urban renaissance within the sub-region.

4.8 Policy E27 Landscape character and local distinctiveness in rural areas and Green Belt states.

All proposals for new development in rural areas and the Green Belt will be expected to contribute to the protection, enhancement and restoration of the Borough’s distinctive landscape character by:

a) protecting critical environmental capital and key features in the landscape,
b) protecting the setting of rural and urban settlements;
c) protecting, enhancing and restoring archaeological and historical features;
d) protecting farmsteads, barns, mills and other prominent buildings, and man made features such as ponds, lodges, and bridges;
e) protecting and enhancing historic field patterns, including walls and hedgerows;
f) seeking the use of local materials, or the nearest match, and vernacular styles in all new buildings, walls, and fences, and by resisting urban style lighting, materials and standardised detailing;
g) maintaining views and avoiding skyline development;
h) encouraging tree planting, woodland and afforestation of native species when appropriate in the landscape setting;
i) protecting and restoring native species;
j) protecting, restoring, enhancing, and creating habitats;
k) reclaiming derelict land where appropriate; and
l) by conserving and enhancing river corridors.

4.9 Policy E2 Nature conservation – county biological and geological heritage sites and local nature reserves states

Development likely to have an adverse effect on the biological heritage sites, regionally important geological/geomorphological Sites or local nature reserves shown on the Proposals Map, will not be permitted.
5. Justification

Erection of a replacement dwelling at Thorsdene, Ridehalgh Lane, Briercliffe, Burnley

5.1 The NPPF states that Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances, and Policies GP2 and E27 are explicit in stating that development of new housing outside the urban boundary is not acceptable unless it is for the provision of affordable housing close to a settlement or for provision of an agricultural or forestry workers dwelling. It is not considered that this development represents new housing, but a replacement dwelling on the site of an existing dwelling. Paragraph 51 of the NPPF also states that “local planning authorities should identify and bring back into residential use, empty housing and buildings in line with local housing and empty homes strategies.

5.2 Policy GP2 strictly controls new development in the rural area, in order to maintain a compact urban core and prevent urban encroachment into the countryside, ensuring that development is sited in sustainable locations close to existing services.

5.3 The policy allows for the conversion of buildings in rural areas providing that they are capable of conversion without extensive alterations or rebuilding. The National Planning Policy Framework states at paragraph 55, that new isolated homes in the countryside should be avoided unless there are special circumstances. In this case it is considered that the site has an existing residential use, and the replacement of the log cabin with a dwelling built using traditional materials to modern standards would provide an immediate enhancement to the area. The proposal would not have a detrimental effect on the Housing Supply policies in that the development would provide a “one for one” replacement; and the proposal would clearly provide an enhancement to the immediate area.

5.4 The main issue is the need to assess the established use of the building/application site and whether the lawful planning use has been abandoned or not.

Established use of the site and abandonment

5.5 Abandonment is not a concept embodied in planning law, but has arisen out of court judgments. It applies to all uses, as explained generally, but particularly to those which pre date the appointed day (1st July 1948). So far as residential development is concerned, abandonment is normally an issue related to buildings of the early 20th
Century wooden timber chalet type or even older remote rural cottages.

5.6 If it is found that a residential use has not been abandoned there may be permitted development rights to alter and extend the original dwelling, or allow a replacement dwelling.

Abandonment Case-Law

5.7 In the late 1960’s Lord Denning MR provided an interpretation of “abandonment” in Hartley v Minister of Housing and Local Government [1970] 2 WLR 1 as follows

“I think that when a man ceases to use a site for a particular purpose and lets it remain unused for a considerable time then the proper inference may be that he has abandoned the former use. Once abandoned, he cannot start that to use that site again, unless he gets planning permission: and this is so even though the new use is the same as the previous one.”

5.8 Widgery LJ considered that a use had been abandoned rather than merely suspended when it had “ceased with no intention to resume it at any particular time.”

5.9 Another case, SSETR v Hughes (2000) 80 P & CR 397 (Kennedy, Thorpe and Mance LJJ) provided some useful clarity on how abandonment was to be assessed. The case concerned a residential property which had been left to become dilapidated in an area where there were planning constraints. There was some evidence that the intention of the owner, who left the property to live elsewhere between 1963 and 1990, was to resume habitation.

5.10 Four factors in particular were considered:

“(1) the physical condition of the building;
(2) the length of time for which the building had not been used for residential purposes;
(3) whether it had been used for any other purposes; and
(4) the owner's intentions.”

5.11 As far as criterion (4) intentions is concerned, Kennedy LJ was satisfied that in the Hartley case both Widgery LJ and Lord Denning MR were putting forward “an objective test”, and that the state of mind of the owner would be relevant when investigating the facts of the matter, but it would not necessarily be decisive.
5.12 This implies that the objective state of mind and the subjective state of mind are factors that can be taken into account.

5.13 In a later appeal decision in Allerdale (2002) an inspector found that although the intentions of previous owners suggested that the residential use of a farmhouse had been maintained, the physical condition of the building firmly indicated that it had been abandoned. In particular it had no roof and there were no internal floors or ceilings. No attempt had been made to preserve the building in a stable condition and accordingly its physical condition was overriding. A Lawful Development Certificate was denied.

5.14 The judgment of abandonment is a matter of fact and degree and cases have shown over the years that the time which has to elapse after cessation of use for “abandonment” to have occurred is extremely variable and to a large extent relies on the level of physical deterioration.

Application of the four tests

Physical Condition

5.15 The present building whilst currently in a state of disrepair, could easily become habitable once more with some minor repairs.

5.16 The roof and walls remain in situ, and the services within the building such as water and electricity remain operable. The photographs at Appendix A indicate the current state of the building at the present time.

5.17 The building remains weatherproof with intact windows walls and doors thereby retaining the essential characteristics of a dwelling.

Length of time not been used for residential use

5.17 The present building has previously been used for permanent residential use in the 1950’s, 1960’s and 1970’s. Appendix B includes photographs of the property during this period and a letter dated December 2012 from a previous occupier of the property.

5.18 During the 1980’s and 1990’s the building was used as a weekend retreat, by its former owner. The use as a second home/weekend retreat falls within Use Class C3, the same Use Class as a dwelling.

5.19 The present owner acquired the property in 2007, and whilst not living in it has always intended to renovate the property to enable habitation. The opportunity has now come up to replace the dwelling with one of
a more permanent nature. Appendix C includes Council Tax bills for the property from Burnley Borough Council identifying the property as a residential property and charging the residential rate accordingly from 2007 when the present owner acquired the property to present day).

**Used for other purposes**

5.20 At no time in its history has been the building been used for anything other than residential use (Class C3).

**Owners Intentions**

5.21 Prior to acquisition by the present owner, the property was used as a weekend retreat for a number of years. The present owner as indicated above has always ensured the present building is watertight, and whilst in a state of disrepair, has always intended to bring the property to habitable standards, in order to resume occupation.

**Conclusion**

5.24 There is a considerable amount of case law on abandonment. It holds that an established use cannot be abandoned by mere non-use, and for such a use right to be abandoned there must be some intention to abandon, although this is a matter of fact and degree.

5.25 The log cabin has been in place for a period dating back to the 1940’s. It is held that if a cessation of use is merely temporary then it does not amount to abandonment. Whilst the present owner does not live in the property, his intention has always been to re-occupy the property at some stage. Throughout the period the property has not been occupied it has continued to be rated and charged accordingly as a dwelling.

5.26 According to the Wednesbury principles of “reasonableness”, “a reasoning or decision is Wednesbury unreasonable if it is so unreasonable that no reasonable person acting reasonably could have made it”. Clearly it is Wednesbury unreasonable for the Borough Council on the one hand to be charging Council Tax for the property as a domestic dwelling (and to have done so for a number of years), whilst claiming on the other hand that the use as a dwelling in planning terms has been abandoned. (Perhaps put all this in bold to emphasise it?)

5.27 It is our considered opinion that whilst the building has been in a state of disrepair, at no time has it reached the point of becoming altogether uninhabitable without provision of some minor repairs and improvements. Although not occupied presently, the building has
been occupied as a weekend retreat until the 1990’s and at no time has it been used for other purposes outside of Use Class C3. Furthermore it has always been the intention of the owners past and present that the property is a dwelling.

**Policy Justification for a replacement dwelling**

5.22 As demonstrated above the use of the site is residential with a building on site which has been occupied previously as a dwelling.

5.23 With regards to a replacement dwelling, the NPPF states that Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances. This development is not considered to be a new home in the countryside, but solely a replacement home for an existing out of date dwelling.

5.24 In fact if one considers the intention of the NPPF, (whilst not directly relevant to this application), at paragraph 89 it states that the construction of a replacement dwelling in the Green Belt is appropriate providing the new building is in the same use and not materially larger than the one it replaces. Several local authorities define materially larger as being not more than 50% larger.

5.25 Green Belt offers a much higher protection to land than many other designations in order to safeguard countryside areas from encroachment.

5.26 In this case, the existing building on the site has a footprint of in the region of 90 square metres with the proposed replacement dwelling having a footprint of 135 square metres.

5.27 With regards to the policies within the adopted Burnley Local Plan, and in particular the release of further housing land, Policy H2 is not considered directly relevant to this proposal as the application proposes a one for one replacement of an existing dwelling, and therefore does not represent additional housing stock in the Borough.

5.28 Policy GP2 and E27 seek to guide and control development in the rural area and ensure proposals do not have a detrimental effect on the visual amenity and maintaining views.

5.29 There is a significant number of trees at the site, and an arboricultural assessment accompanies this application. The majority of the trees are assessed as being of Grade B or C. A number of trees are earmarked for removal in accordance with the assessment in order to allow adequate sunlight and daylight provision the dwelling. This would not have any detrimental effect on views into the site, but due to the
topography would allow some degree of sunlight and daylight provision to the replacement dwelling.

5.30 The proposed materials for the dwelling are natural stone or a close match artificial stone for the walling materials and the roofing materials are proposed to be natural slate. These materials are considered to be appropriate to the rural setting of the building and reflect the traditional building materials used in and around the Burnley area.

5.31 The proposed design has been kept to single storey, with the ridge heights kept to the minimum necessary in order to reduce any intrusion of the dwelling into the sensitive rural landscape. The single storey design ensures that the development sits comfortably within its landscape setting, and the building does not interrupt the skyline or impact adversely on significant views from the surrounding area.

5.32 The access drive will be surfaced in a way that reduces any impact on the root protection areas of the surrounding trees.

5.33 It is considered that this proposal is acceptable and is in accordance with Policies H2, GP2 and E27 of the Burnley Local Plan.
6. Conclusion

6.1 It is considered that the residential use of the site has not been abandoned as discussed within the body of this document and that it would be considered unreasonable for the Council to reach that conclusion in planning terms when the application site has been subject to residential charging of Council tax. According to the Wednesbury Principles of reasonableness and a case recorded in Dacorum Borough, it can be claimed that it would be unreasonable for the Council to treat Thorsdene as a dwelling for Council Tax purposes on the one hand and claim abandonment when the intention is to reconstruct and occupy the building on the other.

6.2 As the existing site has a residential use, it then falls to assess whether the replacement dwelling is an acceptable scale, design and form. It is considered that the design and materials are appropriate to the rural area, and the scale is in keeping with the existing building and surrounding character of the area and the impact of the proposal on the landscape would not have any further effect than as present. Indeed, it would enhance the surroundings by the removal of a building in a state of disrepair.

6.3 This application is considered to be in accordance with the NPPF, and the Burnley local Plan saved policies and will represent an enhancement to the rural landscape in the immediate area.
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