Project: Removal and Variation of Conditions on Planning Permission 17/05359/FUL 99 Boreham Road, Warminster, BA12 9JY By: Matt Williams DipTP MRTPI Planning Consultant/Partner	**BRIMBLE LEA** *Chartered Planning and Architecture* www.brimblelea.com

PLANNING STATEMENT

1.0 BACKGROUND

1.1 99 Boreham Road was developed pursuant to planning permission 17/05359/FUL dated 8th March 2018 which was subject to 10 conditions. A copy of the planning permission is provided with the application.

1.2 Mr & Mrs Conlin, owners of 99 Boreham Road since October 2022, recently discovered through an enforcement investigation by the Council that the developer who they purchased the property from removed a hedgerow along the southern boundary (fronting Boreham Road), contrary to condition 5 of the planning permission. The application therefore seeks to remove this condition for reasons set out further in this Statement.

1.3 Mr & Mrs Conlin have installed gates at the entrance which are hung to open inwards but they are set back 4.46 metres from the edge of the carriageway as opposed to 4.5 metres required by condition 8 of the permission (i.e. 4 centimetres closer to the road). This application therefore seeks to vary condition 8 accordingly.

1.4 The removal of the hedgerow referenced in paragraph 1.2 has significantly enhanced pedestrian and vehicle visibility at the vehicular access to Mr & Mrs Conlin's property and the application therefore seeks to vary condition 7 of the planning permission to secure the improved safety in-perpetuity.

2.0 CASE FOR THE REMOVAL AND VARIATION OF CONDITIONS

Context for the Imposition of Planning Conditions

2.1 Paragraph 55 in the National Planning Policy Framework (NPPF) states that planning conditions should only imposed where they are necessary, relevant to planning, relevant to the development being permitted, enforceable, precise and reasonable in all other respects (i.e. the 6 tests).

2.2 The "Use of Planning Conditions" section of the Planning Practice Guidance (PPG) sets out detailed guidance on the approach that should be taken with conditions in relation to the 6 tests.

Removal of Condition 5 – Hedgerow

2.3 It is unfortunate that the developer removed the hedgerow. However, the hedgerow comprised low quality Cypress which could not reasonably be described as "*an important landscape feature*" referenced in the reason for condition 5.

2.4 Condition 5 required the retention of the hedgerow in-perpetuity. However, Cypress plants typically have a lifespan of 10-20 years and, as with any plants, would not survive in-perpetuity. The hedgerow was therefore going to disappear at some point; it was just a case of when. As such, condition 5 fails the tests of reasonableness and enforceability. The "model" condition used by local planning authorities to protect existing and proposed landscaping is ordinarily time-limited to 5 years.

2.5 Condition 5 ends with the words *"unless otherwise agreed in writing by the Local Planning Authority*". However, the Government's historic guidance on planning conditions set out in Circular 11/95 confirmed that imprecise or unenforceable condition cannot be made acceptable by phases such as "except with the prior approval of the local planning authority" (known as tailpieces) because they purport to provide an informal procedure to waive or modify their effect. While Circular 11/95 has been cancelled, the presumption against tailpieces in conditions has been established in case law through the judgements of *R (Midcounties Co-Operative Ltd) v Wyre Forest District Council* [2009] EWHC 964 (Admin) and *R (Hubert) v Carmarthenshire County Council* [2015] EWHC 2327 (Admin).

2.6 The dwelling is more visible in the street without a hedgerow but the character of the development is typical of a suburban location and was an inevitable consequence of relying upon a Cypress hedge to remain in-perpetuity. Any perceived visual impact arising from the removal of the hedgerow is far outweighed by significantly enhanced visibility along the road and pavement for drivers emerging from the access. This improved visibility can be secured in-perpetuity and is proposed further in this Statement.

2.7 Whilst there is no reasonable basis for the Council to retain condition 5, this application in respect of condition 5 is submitted on a "Without Prejudice" basis because it may transpire that the developer lawfully removed the hedgerow before the planning permission was implemented.

Variation of Condition 8 – Gates

2.8 Condition 8 of the planning permission states that any gates [at the access] shall be set back 4.5 metres from the edge of the carriageway and hung to open inwards only.

2.9 Mr & Mrs Conlin have installed gates at the access which are hung to open inwards only but they are set back 4.46 metres from the edge of the carriageway, so 4 centimetres closer to the road than allowed for with condition 8.

2.10 According to a report by RAC Foundation's 2021 publication titled Standing Still, the average length of the top five car models sold in the UK in 2020 was 4.3 metres (https://www.racfoundation.org/wp-content/uploads/standing-still-Nagler-June-2021.pdf). An article by Nationwide Vehicle Contracts also reports that a typical car in the UK measures around 4.4 metres long (https://www.nationwidevehiclecontracts.co.uk/guides/ask-nvc/understanding-car-size-and-dimensions#:~:text=What%20is%20standard%20size%20car,1821mm%20wide%2C%20and%201534mm%20tall).

2.11 As such, a 4 centimetre shortfall represents a trivial breach of condition 8 because the position of the gates installed enables drivers of an average car length to open and close the gates without encroaching the carriageway. It should also be noted that a number of car models exceed 4.5 metres in length and would therefore have to encroach onto the highway, even if condition 8 was enforced.

2.12 The Applicants understand that a condition needs to control the position of the gates in-perpetuity and are therefore applying to vary condition 8 by substituting "4.5 metres" with "4.46 metres" instead of removing this condition.

Variation of Condition 7 – Visibility

2.13 Condition 7 of the planning permission requires the provision of visibility splays on both sides of the access to the rear of the footway based on co-ordinates of 2.4m x 2.4. The purpose of this condition is to ensure that motorists emerging from the access can see anyone travelling along the pavement within 2.4 metres of the access. The Council relied upon motorists crossing the pavement to provide visibility for oncoming vehicles along Boreham Road.

2.14 Without the roadside hedgerow, there is now a grass verge within the Applicants' control which provides uninterrupted visibility across the entire site frontage which equates to 21 metres in a south-easterly direction and 39 metres in a north-westerly direction. This verge also enables motorists emerging from the access to clearly see oncoming vehicles travelling along Boreham Road in both directions, without having to obstruct the pavement.

2.15 As such, the removal of the roadside hedgerow has considerably improved the safety for users of the highway and the access. The Applicants are prepared to maintain this improved visibility in-perpetuity by agreeing to vary condition 7 so that it requires the provision of visibility splays on both sides of the access to the rear of the footway based on co-ordinates of 2.4m x 21m in a south-easterly direction and 2.4m x 39m in a north-westerly direction.

2.16 Contrary to the decision notice, the requirements to fulfil condition 7 (as currently worded or varied) does not require the relocation of a bus stop. There is a bus stop flag sign mounted on a telegraph post to the south-east of the access but this is approximately 2.5 – 3.0 metres above the pavement level and does therefore not obstruct visibility.

3.0 CONCLUSION

3.1 Condition 5 fails the tests of reasonableness and enforceability because a Cypress hedge would not survive in-perpetuity and must therefore be removed. The variation of condition 8 to reference 4.46m instead of 4.5m will still enable drivers of average car lengths to open and close the gates without obstructing the carriageway, recognising that some cars could obstruct the highway even if the gates are 4.5 metres from the carriageway edge. The variation of condition 7 in respect of visibility significantly improves the safety for users of the highway and the access.

3.2 For these reasons, the Council is respectfully requested to remove condition 5 and vary conditions 7 and 8 accordingly.

3.3 In the unlikely event that the Council refuse the application to remove condition 5, the Applicants reserve the right to explore whether the hedgerow was lawfully removed by the developer.