

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **PLANNING AND DEVELOPMENT CONTROL COMMITTEE**

DATE: **WEDNESDAY 12TH DECEMBER 2012**

REPORT BY: **HEAD OF PLANNING**

SUBJECT: **OUTLINE APPLICATION - ERECTION OF 12NO. DWELLINGS INCLUDING DEMOLITION OF EXISTING OUTBUILDINGS AND CREATION OF A NEW ACCESS AT "BANK FARM", LOWER MOUNTAIN ROAD, PENYFFORDD, NR. CHESTER, FLINTSHIRE**

APPLICATION NUMBER: **050003**

APPLICANT: **HOLTS CONSERVATORIES LTD**

SITE: **"BANK FARM", LOWER MOUNTAIN ROAD, PENYFFORDD, NR. CHESTER, FLINTSHIRE**

APPLICATION VALID DATE: **30.07.2012**

LOCAL MEMBERS: **COUNCILLOR P. LIGHTFOOT**

TOWN/COMMUNITY COUNCIL: **HIGHER KINNERTON COMMUNITY COUNCIL**

REASON FOR COMMITTEE: **SCALE OF DEVELOPMENT RELATIVE TO DELEGATION SCHEME**

SITE VISIT: **YES (AT REQUEST OF CHAIRMAN OF PLANNING AND DEVELOPMENT CONTROL COMMITTEE)**

1.00 SUMMARY

1.01 This outline application proposes the demolition of existing buildings and redevelopment by the erection of 12 No. dwellings on land off Bank Farm, Lower Mountain Road, Penyffordd. The proposed access forms part of this application with matters relating to appearance, landscaping, layout and scale reserved for subsequent approval.

2.00 RECOMMENDATION: TO REFUSE PLANNING PERMISSION FOR THE FOLLOWING REASONS

2.01 1. The proposed development is located in the open countryside outside the settlement boundary of Penyffordd as defined in the

adopted Flintshire Unitary Development Plan. In such locations new residential development will only be permitted if it can be established by the Local Planning Authority that the dwelling(s) is/are essential to house farm/forestry workers or other key business workers who must live on the site rather than in a nearby settlement. No special circumstances have been advanced in this instance and the development would therefore be contrary to Policies STR1, GEN1, GEN3 and HSG4 of the adopted Flintshire Unitary Development Plan.

2. The majority of the site does not fall properly within the definition of 'previously developed land' as contained within Planning Policy Wales Edition 5 – November 2012, and the proposal would not result in a sustainable pattern of development relative to the village of Penyffordd. Accordingly, the development would be contrary to Planning Policy Wales Edition 5 November 2012 and Policies GEN1, GEN3 and HSG4 of the adopted Flintshire Unitary Development Plan.
3. The proposed scale, form and layout of the development would represent an inappropriate modern urban development within the open countryside which would be detrimental to the sites existing rural character. This would be contrary to Policies STR4, GEN1, GEN3, D1 and D2 of the adopted Flintshire Unitary Development Plan.

3.00 CONSULTATIONS

3.01 Local Member:
Councillor P. Lightfoot
No response at time of preparing report.

Higher Kinnerton Community Council
No response at time of preparing report.

In view of the proximity of the site to the adjoining communities of Penyffordd and Penymynydd, consultation has also been undertaken with the local members and Community Council for this area.

Councillor Mrs C. Hinds
Requests planning committee determination. Preliminary view is that because there is already a commitment for approximately 320 dwellings within Penyffordd, proposal will lead to overdevelopment within the community. Residential development on the site has also previously been refused by residents, community council, local Members, Flintshire County Council and the Welsh Assembly Government.

Councillor D. T. Williams

Requests planning committee determination given concerns that:

- the site is outside the settlement boundary of both Kinnerton and Penyffordd
- the site does not fall within the definition of a 'brownfield site' and a previous application for a residential development was dismissed on appeal
- additional residential development would place increased pressure on services within Penyffordd which has been the subject of a 35% increase in growth since publication of the UDP
- the development would not maintain the character of this open countryside location
- the proposal would result in the loss of traditional farm buildings where there is potential for conversion to residential use.

Penyffordd Community Council

The Council opposes the application as it constitutes development in the countryside, contrary to Flintshire County Council Policy as it is outside of the Unitary Development Plan.

Head of Assets and Transportation

Following the receipt of amended plans there is no objection to the proposed access points to serve the development off Lower Mountain Road and Barracks Lane. Requests that any permission be subject to the imposition of conditions relating to the formation of satisfactory accesses, detailed design of internal estate roads and that the proposed footpath link between the site and Penyffordd is completed prior to the commencement of any other site works.

Countryside Council for Wales

No objection

Dwr Cymru/Welsh Water

Recommend that any permission be subject to conditions in respect of foul, surface and land drainage.

Environment Agency

No response received at time of preparing report.

Airbus

No aerodrome safeguarding objection to the proposal.

Public Open Spaces Manager

Recommends that any permission be subject to a commuted sum payment of £1100 per dwelling in lieu of on-site public open space.

Head of Public Protection

No objection in principle subject to the imposition of a condition requiring land contamination survey given sites usage as former farm complex.

4.00 PUBLICITY

4.01 Press Notice, Site Notice, Neighbour Notification

6 letters of support the main points of which are that the proposal will:

- Improve the visual appearance of the site which is in a poor physical condition.
- Provide new houses which will meet a growing need and be beneficial to the community.

1 letter received which, whilst not objecting to the principle of improving the visual appearance of the site states that:-

- The site should be used for light commercial use and there has been no attempt to implement a previous consent for this use since permission was previously granted.
- If permission were to be granted then the number of dwellings should be reduced from 12 to 8.

5.00 SITE HISTORY

5.01 048780

Change of use of agricultural buildings to light industrial use.
Permitted 06.01.2012

040627

Certificate of lawfulness – residential, retail and associated storage.
Refused 14.02.06

038067

Outline, Demolition of existing buildings and erection of new dwellings.
Application called in by Welsh Government and refused 13.10.05

00/00733

Outline, Erection of 12 No. detached dwellings. Refused 05.09.00

4/2/14925

Change of use of piggery to boarding kennels and cattery. Withdrawn
06.02.90

6.00 PLANNING POLICIES

6.01 Flintshire Unitary Development Plan Policy STR1 – New Development

Policy STR 2 – Transport and Communications
Policy STR 4 - Housing
Policy STR 7 – Natural Environment
Policy STR 8 – Built Environment
Policy GEN1 – General Requirements for Development
Policy STR10 – Resources
Policy GEN3 – Development in the Open Countryside
Policy D1 – Design Quality, Location and Layout
Policy D2 – Design
Policy L1 – Landscape Character
Policy WB1 – Species Protection
Policy AC13 – Access and Traffic Impact
Policy AC18 – Parking Provision and New Development
Policy HSG4 – New Dwellings Outside Settlement Boundaries

ADDITIONAL GUIDANCE

Planning Policy Wales Edition 5 – November 2012

7.00 PLANNING APPRAISAL

7.01 Introduction

This outline application proposes the demolition of all the existing buildings and the redevelopment of the site by the erection of 12No. dwellings on land at Bank Farm, Lower Mountain Road, Penyffordd.

7.02 Site Description

The site which is approximately 0.9 hectares in area, is located on the south eastern side of Chester Road, at its junction with Barracks Lane and Lower Mountain Road, approximately 0.5km to the east of Penyffordd.

7.03 The site accommodates a redundant farm dwelling with associated buildings in various states of repair. These buildings comprise a mix of older brick/timber frame outbuildings and more modern buildings constructed of breeze block and corrugated sheeting external walls.

7.04 The site is bounded to the north by a mature and well established hedgerow, which also exists in part to the southerly end of the western site boundary with the remainder formed by the flank wall of one of the buildings. The demarcation of boundaries to the south and east is by way of a 1.2m high post and wire fence. The area surrounding the site is predominantly agricultural, although there are a number of scattered residential properties.

7.05 Proposed Development

The plans submitted as part of this application propose the demolition of all the existing buildings on site and redevelopment by the erection of a total of 12 No. dwellings.

7.06 Although submitted in outline form, an indicative site layout with

accompanying elevational details has been provided illustrating the erection of 4 different two-storey house types some 8.6 - 9.4 metres in height, a number of which are proposed to be sited around a central courtyard.

7.07 **Background History**

For Members information there is a very significant planning history relating to residential development at this location, which is referred to in paragraph 5.00 of this report.

7.08 In summary an outline planning application for the erection of 12 No. dwellings was refused in September 2000 (Code No. 00/00733). This application was refused for the following reasons:-

1. In the opinion of the Local Planning Authority the proposal is contrary to Policy H6 of the Alyn and Deeside Local Plan, Policies B5, B8 of the Clwyd County Structure Plan First Alteration and Policies HSG5, HSG7 of the Structure Plan Second Alteration: Flintshire edition. The site lies outside the settlement boundary in an area where there is a general presumption against allowing new dwellings. The applicant has provided insufficient justification as to why the application should be approved contrary to these policies.
2. The proposal represents non-essential development in the open countryside which will be detrimental to the character and appearance of the locality. As such the development is contrary to Policy H3 of the Clwyd County Structure Plan First alteration and Policy CONS5 of the Structure Plan Second Alteration: Flintshire edition.
3. The proposal if allowed could set an undesirable precedent for similar development in the open countryside which the Local Planning Authority would find difficult to resist. The result of this would adversely affect the character and amenities of the area and undermine the settlement and landscape policies of the Alyn and Deeside Local Plan, the Clwyd County Structure Plan First Alteration and the Structure Plan Second Alteration: Flintshire edition.

7.09 A subsequent outline application for the demolition of existing buildings and the erection of new dwellings at this location was called in for determination by the Welsh Assembly Government (Code No. 038067). Following its consideration by the Inspector, permission was refused on 13th October 2005 by the Assembly's Planning Decision Committee. The Committee agreed with the Inspector that there was no policy basis on which to support residential development at the site. This was addressed in paragraph 32 of the Inspectors report as follows:

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“Although part of the site might have been used for farm sales in the past, it remains agricultural in its past function and its current appearance. As defined in Figure 2.1 of PPW, previously developed land “is that which is or was occupied by a permanent structure (excluding agricultural or forestry buildings) and associated fixed surface infrastructure”. Although the PPW definition specifically excludes “land and buildings currently in use for agricultural or forestry purposes” (my underlining), this must also exclude land and buildings last used for agricultural purposes, even where they are now redundant. To conclude otherwise would be likely to have serious implications for the development of rural farmyards throughout the Welsh countryside”.

- 7.10 The Inspector went on to address the credentials of the proposals in relation to sustainability and the open countryside location in paragraphs 33 and 34.

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“The application site is well outside recognised settlement boundaries and the development would not have good access to jobs or public and other services. Consequently, the proposed development would not meet PPW priorities for rural areas, which aim to secure sustainable rural communities with access to high quality public services. The occupants of the proposed dwellings would be largely dependant on the private car, rather than other transport modes, for access to normal daily activities and accordingly, the development of this site would fail to promote a sustainable pattern of development.”

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“The thrust of all these policies of the approved and emerging development plan is in line with government guidance in PPW intended to protect and conserve the open countryside and to ensure that new housing is compatible with sustainability objectives. The site does not meet the definition of brownfield land, and as there are no other special circumstances advanced in support of the proposed residential development, it would therefore be contrary to the force of the relevant policies in the development plan for this locality”.

- 7.11 The Assembly’s Planning Decision Committee agreed with this analysis in its decision letter.

6. The Planning Decision Committee agree with the Inspector that there are no other special circumstances advanced in favour of the development which would outweigh the national and local policy objections to the proposal. They also agree with him that the proposal would have a detrimental impact on the landscape and be unsustainable in environmental terms”.

7.12 In addition to the above, a representation was submitted during the Unitary Development Plan Deposit Consultation Stage objecting to the content of the plan. The representation sought a change to the plan whereby land at Bank Farm was allocated for residential development under Policy HSG1. The representation was pursued through to public inquiry and was considered by the Inspector by way of written representation. The Inspector concluded in her report dated May 2009 that:

“The site is some distance away from the settlement boundary and is set in open countryside. Not all brownfield sites will necessarily be suitable for development. Development on this site would appear as an isolated group of dwellings in the countryside, poorly related to the existing settlement pattern. Furthermore, since this site is well outside the settlement it would not accord with the sequential search for the allocation of sites. Having considered all the submissions made I conclude the site should not be allocated”.

7.13 The most recent history at this location relates to a proposal for the retention of the existing farmhouse in residential use and the change of use of 8 buildings on site to light industrial use. This was permitted on 6th January 2012, subject to a number of conditions one of which required the identification of a residential curtilage for the dwelling. No development has commenced in accordance with the permission obtained.

7.14 **Relevance of Site History**

A central issue in determining the current application is whether there has been a material change in planning policy and/or in any other material planning considerations since the decisions were taken previously to refuse planning permission for residential development at the site, and not to allocate the site in the UDP for use for residential development.

7.15 The applicants case through its agent is that there are material changes in circumstances as set out below:-

- Structure and Local Plans previously referred to by the Assembly's Planning Decisions Committee are no longer Development Plan documents
- As the UDP is now adopted, the weight to be given to the policies has increased
- A revised version of Planning Policy Wales has been published since the decision by the Assembly which places considerable emphasis on the redevelopment of brownfield sites and reducing the length of car journeys
- The site has an extant permission for light industrial use and should be treated as brownfield land

- The Council's 5 years of housing land supply relies on greenfield land contrary to the aims of PPW
- The current scheme proposes 12 dwellings as compared to the previous proposal for 20 dwellings submitted under Code No. 038067
- The scheme has been designed to resemble a range of converted farm buildings to address concerns that the previously submitted scheme resembled a 'modern housing estate'.
- The site is now sustainable following the creation of bus stops outside the site and the intention is to create a footpath link to Penyffordd.

In support of this stance the applicant's agent has submitted additional information re-iterating the view that the site should be treated as previously developed land and drawing attention to a case in an adjoining authority where a site located some distance outside a settlement boundary had been granted permission for residential development. Having looked at this in detail, I do not consider that the circumstances are comparable in terms of its location and previous use and therefore I do not find the comparison helpful when considering this application.

7.16 **Main Planning Issues**

It is considered that the main planning issues can be summarised as follows:-

- (a) Principle of development having regard to the planning history and the current policy in respect of previously developed land (PDL) (also referred to as 'brownfield' land)**
- (b) Sustainability of development given the site's location outside any recognised settlement boundary.**
- (c) Scale/form of development proposed**
- (d) Acceptability of highways and access to serve the development**
- (e) Impact on ecology**

7.17 **Principle of Development**

The definition of previously developed land (PDL) also known as 'brownfield land', is contained within Fig 4.3 of Planning Policy Wales (PPW) Edition 5 – November 2012 where it states:-

"Previously developed land is that which is or was occupied by a permanent structure (excluding agricultural or forestry buildings) and associated fixed surface infrastructure. The curtilage of the development is included, as are defence buildings, and land used for mineral extraction and waste disposal where provision for restoration has not been made through development control procedures".

Excluded from the definition are:

- *Land and buildings currently in use for agricultural or forestry purposes.*
- *Land in built up areas which has not been developed previously, for example parks, recreation grounds and allotments, even though these areas may contain certain urban features such as paths, pavilions and other buildings;*
- *Land where the remains of any structure or activity have blended into the landscape over time so that they can reasonably be considered part of the natural surroundings;*
- *Previously developed land the nature conservation value of which could outweigh the re-use of the site; and*
- *Previously developed land subsequently put to an amenity use.*

Notes

1. *The curtilage is defined as the area of land attached to a building. All of the land within the curtilage of the site will also be defined as previously-developed. However this does not mean that the whole area of the curtilage should therefore be redeveloped. For example, where the footprint of a building only occupies a proportion of a site of which the remainder is open land (such as a hospital) the whole site should not normally be developed to the boundary of the curtilage. The Local Planning Authority should make a judgement about site layout in this context, bearing in mind other planning considerations such as policies for the protection of open space, playing fields or development in the countryside. They should consider such factors as how the site relates to the surrounding area and requirements for on-site open space, buffer strips and landscaped areas.*
2. *This relates to minerals and waste sites which would otherwise remain unrestored after use because the planning permission allowing them did not include a restoration condition. All other such sites will be restored to Greenfield status, by virtue of the planning condition.*

7.18 In addressing this first issue, i.e. - the principle of development, Members will note that there is an apparent tension between the first sentence of the definition in Figure 4.3 which makes no reference to agricultural buildings having to be 'currently in use' for that purpose and the first bullet point in the list of specific exclusions which suggests to the contrary. It will be noted that the Inspector in his report to the Assembly's Planning Decision Committee in 2005, sought to resolve this tension by giving greater weight to the absence of any reference to the need for a current agricultural use in the first sentence of the definition.

7.19 This approach is acknowledged but in order to determine this current

application it is considered that it is necessary to consider this issue in more detail. For this reason, independent legal advice has been sought on the interpretation of PDL, particularly in relation to the circumstances of this application.

- 7.20 On the basis of this advice, it is my firm view that the land occupied by the dwellinghouse and its curtilage does constitute PDL as it meets the definition contained in Figure 4.3. I therefore consider that the Assembly erred in failing to make this distinction between the residential part of the site and that in former agricultural use.
- 7.21 It is also considered that it is important to approach the definition of PDL in its proper context. It would be illogical if land occupied by agricultural buildings, never used for any purpose other than agriculture, would suddenly become 'previously developed land' when the building became redundant, even though it would not have been viewed as 'previously developed' up to that point. On this basis I agree with the Assembly's conclusion in 2005, that land occupied by buildings previously used for agricultural purposes but which have not been put to any other use since then, should not be regarded as PDL. Accordingly, I conclude that the proper analysis is that whilst the dwellinghouse and its curtilage is to be regarded as PDL, the remainder of the application site (and therefore the majority of the site) is not PDL.
- 7.22 The applicant's agent considers that the site in its entirety should be classified as PDL, given that it currently has an extant permission issued under Code No. 048780 on 6th January 2012 for light industrial use.
- 7.23 Whilst the case advanced is duly noted, I wish to advise members that:-
- i) the permission obtained under Code No. 048780 relates to the conversion of existing buildings on site for light industrial purposes which is consistent with PPW and in accordance with Policy RE4 of the Unitary Development Plan.
 - ii) the permission obtained under Code No. 048780 has not been implemented. It is considered that this permission for light industrial purposes does not in itself render any part of the site to be PDL that did not have the status before then. I consider that what is relevant is what has happened on the site in the past – whether the land has been 'previously developed' – not whether it is developable in accordance with an extant permission.
- 7.24 If the light industrial permission were implemented, it is acknowledged that this would constitute 'development' of the redundant agricultural buildings by way of a material change of use. The land occupied by those buildings would then be PDL, thereby rendering the site in its entirety PDL from that point onwards.

7.25 The applicant's agent questions the need for having to 'artificially' implement the permission issued under Code No. 048780 before the whole site can be considered PDL. However, irrespective of any planning permission granted, a site has either been developed or it has not and the established policy is that new housing should be directed wherever possible towards PDL. (PPW paragraph 4.9.1). It remains therefore that there is a distinction in PPW between PDL and 'developable sites'.

7.26 However, even if any part of my analysis of whether the site is PDL or not is incorrect, I do not consider that the assessment of the planning merits ultimately turns on this as I consider that the proposal is also unacceptable for other reasons, any of which would be sufficient, in my judgement, to warrant the refusal of permission.

7.27 **Sustainability / Locational Factors**

Even if the site were to be considered to represent PDL the Welsh Government advises in paragraph 4.8.1 of PPW as follows:-

'The Welsh Government recognises that not all previously developed land is suitable for development. This may be for example because of its location, the presence of protected species, valuable habitat, industrial heritage or because it is highly contaminated.'

7.28 When considering the application submitted under Code No. 038067, the Assembly's Planning Decisions Committee said:

"In environmental terms, the residents would be forced to rely on the private car for access to the nearest locations of employment, education, retail, medical and other facilities. Consequently, the development would be in an unsustainable location, it would make further demands on the utilities and rural services, and the travel patterns of the residents would be unacceptable in terms of increased car borne travel.

7.29 The UDP Inspector also considered the sustainability of the site, and was of the view that it was unacceptable in locational terms for the reasons referred to in paragraph 7.10 of this report.

7.30 Whilst the applicant's agent considers that circumstances have changed in the intervening period with the creation of new bus stops outside the application site and the proposal as part of this application to create a footpath link to Penyffordd, these must be assessed in the context of paragraph 9.3.1 of PPW which advises that:

"New housing developments should be well integrated and connected to the existing pattern of settlements. The expansion of towns and villages should avoid creating ribbon development, coalescence of settlements or a fragmented development pattern."

- 7.31 I remain of the view that granting planning permission for residential development at this location would result in built development in the open countryside in a manner poorly related to the form and pattern of existing development. Notwithstanding the creation of the bus stops, it is considered to be an unsustainable location as highlighted in part by the need to construct a footpath to link the development to the village of Penyffordd.
- 7.32 Letters of support for the application make reference to the provision of new houses which will meet a growing need and be beneficial to the community. In adopting the UDP the Council has embraced the Welsh Governments preference for a 'plan-led' approach whereby new housing development is identified by way of a clear spatial strategy which directs growth to sustainable settlements in line with PPW. The settlement of Penyffordd/Penymynydd has a combined growth rate of 29.3%, largely accounted for by the housing allocations at the White Lion site and Wood lane Farm, the latter of which is under construction. The settlement is therefore meeting a local need for housing and in this broader spatial context, there is no justification for seeking to provide additional housing in open countryside locations.
- 7.33 **Scale / Form of Development**
Although submitted in outline form an indicative site layout / elevational details have been submitted as part of the application to illustrate the proposed development of 12 No. dwellings at this location.
- 7.34 The applicant's agent has advised that the scheme has been designed taking into account the concerns expressed by the Assembly's Planning Decisions Committee that the previous proposal resembled a 'modern housing estate'.
- 7.35 The Design and Access Statement submitted as part of the application describes the scale and design of the proposed group of 12 dwellings as being similar to a group of farm houses and farm courtyards. The main concern with this approach however is that the character of traditional farm houses and outbuildings is based on a clear visual and functional primacy of a single farmhouse in relation to its ancillary buildings and land.
- 7.36 The house designs show a great deal of complexity in terms of varying sizes and height, roof pitches and intersecting gables to break up their massing. It is considered that farm buildings usually display more simplistic linear vernacular forms of development.
- 7.37 Accordingly, it is considered that the scale/form/design and layout of the residential development proposed would still have the character of a modern housing layout which would be detrimental to its

surrounding rural character. In this context, it is important to distinguish between this proposal and the extant light industrial permission which involved the change of use of the existing buildings. This is covered in Reason for Refusal No. 3 in my recommendation.

7.38 **Highways and Access**

Consultation on the application has been undertaken with the Head of Assets and Transportation in order to assess the suitability of the highway network, site access and layout to serve the scale of the development proposed.

7.39 Amended plans have been submitted to seek to address concerns initially raised regarding the precise means of access into the site. It has been confirmed by the applicant's agent that the main access to serve the development is proposed from Lower Mountain Road with the internal road layout serving units 1–6 being made up to adoptable standards and units 7-11 being served by a private drive arrangement. It is also proposed that unit 12 be served off its own private driveway onto Barracks Lane. There is no objection to the position of the proposed access points from a highway perspective subject to the imposition of conditions relating to their construction to serve residential development and the internal estate roads. In addition it is recommended that the proposed footpath link between the site and Penyffordd is completed prior to the commencement of any other site works.

7.40 **Ecology**

The application site has been the subject of an ecological survey to assess the impact of development on any protected species which may be present. The Countryside Council for Wales have confirmed that the survey has been undertaken to a satisfactory standard and it is considered that the proposal would not have a detrimental impact on any protected species which may be present.

8.00 CONCLUSION

8.01 In conclusion, it is my view that there has been no material change in circumstances or Welsh Government Policy since both the previous application for residential development and the request for the land to be released for residential development as part of the Unitary Development Plan were considered by the Welsh Government. The definition of previously developed land, as contained within Planning Policy Wales (PPW) has remained unchanged in the intervening period. I also consider that irrespective of whether the site in question is classified as a previously developed site, and if so to what extent, the proposal does not meet the requirements of planning policy in locational terms as it is not in a sustainable location and would lead to a fragmented form of development relative to the village of Penyffordd. My recommendation is therefore for permission to be refused for the

reasons advanced.

In considering this planning application the Council has acted in accordance with the Human Rights Act 1998 including Article 8 of the Convention and in a manner which is necessary in a democratic society in furtherance of the legitimate aims of the Act and the Convention.

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