

DELEGATED REPORT

Report by Jennie Townsend	Date of report: 25/10/2023	Ref: 70038/FUL
Registration: 05/09/2023	LDFC: 13/10/2023	Expiry Date: 31/10/2023
Site Visit: 22/09/2023	Site Notice: 22/09/2023	Press Date: N/A
Objections: 8	Con Area:	Adv Type: PI
Reason for Delay:		EIA: NA
N/A		Dec Level: DEL
		Stat Class: MIOT

Proposal: Variation of condition no. 3 on planning permission reference 69814, to amend the condition to read:

The building hereby permitted shall be used for agricultural purposes only (as defined in section 336(1) of the Town and Country Planning Act 1990) in conjunction with the remainder of the holding as identified in the supporting information submitted with the application.

Location: Sheep Hey, 2 Leaches Road, Shuttleworth, Ramsbottom, Bury, BL0 0ND

Description

The application relates to a site which is in a rural location in the Green Belt, Special Landscape Area and River Valley. The site comprises a large open field which is bounded to the east by Whalley Road and to the west is the M66 which is set lower than the site. There is a public footpath which follows Leaches Lane to the south of the field.

A Prior Approval (69814) was granted for the erection of an agricultural building in association with Sheep Hey Farm which is an agricultural unit of circa 28 hectares. The proposed building would be used for general agricultural storage purposes including the storage of hay and agricultural machinery.

The proposed building would be sited in the south west corner of the field which is close to the field's access located off Leaches Lane. There is an existing field gate which would lead to a 25m long hardcore surface to facilitate the turning for farm vehicles. The building would be 20m long and 12m wide with a ridge height of 4.89m and eaves level of 3.6m.

The proposal complied with all the limitations and conditions as laid out under Article 3 Schedule 2 Part 6 Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

The LPA also made the determination that the proposal was acceptable in relation to the siting, design and external appearance of the agricultural building.

As such it was considered that prior approval was required and granted for the development.

The Prior Approval included 3 conditions, one of which was condition 3, that the building be used for agricultural purposes only and that if its use ceased then the building be removed from site and the land re-instated. The condition was worded as follows -

The building hereby permitted shall be used for agricultural purposes only (as defined in Section 336(1) of the Town and Country Planning Act 1990); in conjunction with the remainder of the holding as identified in the supporting information submitted with the application. It shall be removed and the site reinstated to its original condition by a scheme to be agreed with the Local Planning Authority if at any time it ceases to be used for this purpose.

Reason. To ensure that the building is used solely for agricultural purposes connected

with the working of the holding, and in accordance with Part 6 of the Town and Country (General Permitted Development Order) 2015 (as amended).

This application seeks a variation of condition 3 of the Prior Approval, which is proposed as follows -

The building hereby permitted shall be used for agricultural purposes only (as defined in Section 336(1) of the Town and Country Planning Act 1990); in conjunction with the remainder of the holding as identified in the supporting information submitted with the application.

Reason. To ensure that the building is used solely for agricultural purposes connected with the working of the holding, and in accordance with Part 6 of the Town and Country (General Permitted Development Order) 2015 (as amended).

This deletes the reference that requires the building to be removed should its use cease which the applicant states is unreasonable as the use may cease for a very short period of time (even for one day) but the condition as currently worded would require removal of the building.

To note

The applicant originally applied to remove condition 3 in its entirety but subsequently changed the application to a variation of condition 3 of the Grant of the Prior Approval as worded above.

Relevant Planning History

69070 - Erection of an agricultural building - Approve with Conditions 17/02/2023

69406 - Prior approval for proposed agricultural building - Prior Approval Required and Granted - 22/8/23

Publicity

The applicant originally applied to remove condition 3 in its entirety. One letter was sent to a local resident.

Five objections received -

- Feel that I should point out that I have been unable to find anyone else that has received this letter, which is concerning, given that there is a deadline.
- I wish to appeal against removal of the condition and feel that it would be prudent for this to remain in place given the historical underhand behaviour of the applicant.
- I have spoken to a few residents who felt that planning permission ref 69814 did not seem to invite our comments, I think most people felt that we weren't in a position to comment.
- I live within 200 metres of the proposed agricultural development. The land upon which the applicant wishes to build is in open countryside in the Green Belt, a Special Landscape Area and River Valley.
- The building, which has not yet been built, would stand alone at the edge of a field that has an open aspect across the valley looking towards Holcombe, is currently permitted for agricultural use only. The Council considered that the proposed building would be acceptable and would not significantly harm the special landscape character or the openness of the Green Belt.
- The Council advised the condition to ensure that the building is used solely for agricultural purposes connected with the working of the agricultural holding at Sheep Hey.
- Residents did not object to the use of an agricultural building at the location permitted. However, if the building is no longer required for agricultural purposes in the future, residents would want to see its removal to avoid damaging change of use to other types of buildings which would become inappropriate development that would be harmful to the openness of the Green Belt in this location.
- We consider that the condition is necessary in order to prevent harm to the openness of

the Green Belt and that the proposed application to remove condition 3 should be refused. It is extremely important that this application is refused to uphold planning policy and practices in the Borough, defend intrusion into our Green Belt and to protect the amenity of local residents and visitors to Shuttleworth.

- The A56 is a very busy road, and this is close to the Duckworth Arms. Accidents have occurred on this road with people visiting the Duckworth Arms, and the Wood Lane connection to the motorway. Any further use of openings on to the A56 would be dangerous. Also it is an absolute shame of building on green belt land. Please do not allow this building application to go ahead. Parking is also a problem too for the residents close by.
- Feel uncomfortable that this is the first step towards the land being built upon in the future.
- As residents we are concerned with the access to the lane and how this impacts the road, car park and general area where our families are growing up in.
- The view from the back of our house will be impacted by the erection of a large farm building, possibly decreasing the value of our home. Also our enjoyment of the environment we moved to in 2015 with the knowledge that as the land was green belt we were safe from development of the land.
- I believe that there are possibly less visible areas to place a building to store equipment.
- Removing any conditions of these agricultural structures on green belt land may have long term implications. We feel this could lead to further changes later down the line in order to take advantage of planning regulations in order to amend conditions related to the use of the building, with greater ease. Maintaining the openness of green belt land which is in decline year on year is a concern.

The application was then amended to a variation of Condition 3.

Three letters sent on 20/9/23.

Site notice posted 22/9/23

Three representations received -

- Objection to removal of section 3. This is Green Belt land, a River Valley and a Special Landscape Area. Removal of section 3 provides potential of harm to the area, as above. If no longer required for agricultural purpose in the future then residents would want to see its removal. If it is anticipated possibly not being used for agriculture or being left unused we would question why it needs to be erected in the first place with its impact on the openness of the Green Belt, an area of exquisite beauty and a wildlife area. It is essential both parts of section 3 remains in place, and Bury Council are responsible in preserving our Green Belt.
- Current use of the land is already an eyesore on Greenbelt. A once nice green field is now a dump of what seems like road planings. Overweight vehicles constantly use the bridge to access the site, putting its structural integrity at risk. Witnesses have seen spraying of liquid wastes onto the field, potentially septic wastes.
- Disregard of the spirit of the Green Belt, hence conditions put in place to regulate the use of buildings should remain in its original form.

As the application relates to a variation of condition to the grant of a Prior Approval, the application can be dealt with under delegated powers.

Statutory/Non-Statutory Consultations

N/a

Pre-start Conditions - Not relevant

Unitary Development Plan and Policies

NPPF	National Planning Policy Framework
EN1/1	Visual Amenity
EN1/2	Townscape and Built Design

EN9/1	Special Landscape Areas
OL1	Green Belt
OL1/2	New Buildings in the Green Belt
OL4/5	Agricultural Development
OL5/2	Development in River Valleys
SPD8	DC Policy Guidance Note 8 - New Buildings in the Green Belt

Issues and Analysis

The following report includes analysis of the merits of the application against the relevant policies of both the National Planning Policy Framework (NPPF) and the adopted Bury Unitary Development Plan (UDP) together with other relevant material planning considerations. The policies of the UDP that have been used to assess this application are considered to be in accordance with the NPPF and as such are material planning considerations. For simplicity, just the UDP Policy will be referred to in the report, unless there is a particular matter to highlight arising from the NPPF where it would otherwise be specifically mentioned.

Equality Act 2010: All planning applications are considered in light of the Equality Act 2010 and associated Public Sector Equality Duty, where the Council is required to have due regard for:

The elimination of discrimination, harassment and victimisation;

The advancement of equality of opportunity between persons who share a relevant protected characteristic and person who do not share it;

The fostering of good relations between persons who share a relevant protected characteristic and person who do not share it; which applies to people from the protected equality groups.

Human Rights: All planning applications are considered against the provisions of the Human Rights Act 1998.

Under Article 6 the applicants (and those third parties who have made representations) have the right to a fair hearing and to this end full consideration will be given to their comments.

Article 8 and Protocol 1 of the First Article confer a right to respect private and family life and a right to the protection of property, ie peaceful enjoyment of one's possessions which could include a person's home, and other land and business assets.

In taking account of the Council policy as set out in the Bury Unitary Development Plan 1997 and all material planning considerations, it is concluded on balance that the rights conferred upon the applicant/ objectors/ residents/ other interested party by Article 8 and Article 1 of the First Protocol may be interfered with, since such interference is in accordance with the law and is justified in the public interest. Any restriction of these rights posed by refusal/ approval of the application is legitimate since it is proportionate to the wider benefits of such a decision, is based upon the merits of the proposal, and falls within the margin of discretion afforded to the Council under the Town & Country Planning Acts.

The Crime and Disorder Act 1998 imposes (without prejudice to any other obligation imposed on it) a duty upon the Council to exercise its functions and have due regard to the likely effect of the exercise of its functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. In so doing and on making planning decisions under the Town and Country Planning Acts, the material Planning considerations shall have due regard to the provisions of the Crime and Disorder Act 1998 and its implications in the exercise of its functions.

Policies

Para 149 of the NPPF states that buildings for agriculture are appropriate development in

the Green Belt.

UDP Policy OL1 - Green Belt states the Council will maintain a Green Belt, ensuring that it fulfils the following strategic purposes:

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns from merging into one another;
- to assist in safeguarding the countryside from further encroachment;
- to preserve the setting and special character of historic towns;
- to assist in urban regeneration, by encouraging the recycling of derelict and other land.

UDP Policy OL1/2 - New Buildings in the Green Belt says the construction of new buildings inside the Green Belt is inappropriate development, unless it is for one or more of the following purposes:

- agriculture and forestry (except where permitted development rights have been withdrawn);
- essential facilities for outdoor sport and outdoor recreation, for cemeteries, and for other uses of land which preserve the openness of Green Belt and which do not conflict with the purposes of including land in it;
- limited extension, alteration or replacement of existing dwellings, provided that this would not result in disproportionate additions over and above the size of the original dwelling, or, in the case of replacement of existing dwellings, the new dwelling is not materially larger than the one it replaces;
- limited infilling in existing villages as set out under Policy OL1/3.

UDP Policy EN9/1 - Special Landscape Areas strictly controls development which is required to be sympathetic to its surroundings in terms of its visual impact. high standards of design, siting and landscaping will be expected. Unduly obtrusive development will not be permitted in such areas.

Policy OL4/5 - Agricultural development require buildings to be sited and designed in such a manner as to minimise visual impact to the landscape having regards to height, materials, landform and landscaping; relate well to existing farm buildings and not have an unacceptable impact on the amenity of any neighbouring properties.

Policy OL5/2 - Development in River Valleys only considers development acceptable where the development would not lead to the division of open parts of the valley into sections and it would fall within the terms of the listed exceptions, which includes Green Belt.

SPD8 provides guidance on the construction of new buildings in the Green Belt and specifically to agricultural buildings, states new buildings should normally form part of a group rather than stand in isolation and relate to existing in size and colour. The site should be selected close to a highway for access purposes and relate to landscape features so as not to harm views of the skyline.

Careful consideration should be given to the impact of a new building when viewed from several locations in both the immediate and wider countryside, with significant weight given to views from main roads, public footpaths and settlements. There should be an emphasis on materials and colours that have the least visual impact on the surrounding area. Consideration should also be given to the best way of integrating the building with its immediate surroundings.

Assessment

The main issue is whether the disputed condition (condition 3) in its entirety is reasonable and necessary to make the development acceptable with regard to:

- impact on the Green Belt, including openness and other purposes of including land in it;
- effect on the character and appearance of the area;
- impact on nearby residential properties;

- impact on highway safety.

The agricultural building did not require a full planning consent as 'in principle' it complied with all the limitations and conditions as laid out under Article 3 Schedule 2 Part 6 Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). In addition, under para 149 of the NPPF, buildings for agriculture are considered as appropriate development in the Green Belt and consequently the impact on the openness of the Green Belt or other purposes of including land within it are not matters requiring any further assessment.

The assessment of the original prior approval application considered and concluded that in terms of siting, design and appearance, the development would not harm the character and appearance of the area, would not significantly effect residential amenity and would not impact on highway safety. The assessment did not identify any conflict with the policies in the adopted plan or identify any immediate effects the development would have. It was concluded that the proposed development would therefore be acceptable and comply with policies OL1/2, OL4/5, EN9/1, SPD8 and the principles of the NPPF.

In granting the prior approval the LPA were therefore satisfied to accept an agricultural building in this location. It is also inherent in national planning policy that agricultural development is not inappropriate in the Green Belt and therefore it is not to be regarded as harmful either in terms of the openness of the Green Belt or to the purposes of including land in the Green Belt.

The applicant considers that the condition imposed by the LPA, for the building to be removed should the use cease for any period of time, is unreasonable as the condition would require the building to be removed should the use cease for any time period.

As stated in the NPPG, '*a period of non-use does not equate to cessation or termination of the use for which the prior approval was granted*' and that '*a condition requiring the removal of the building that is clearly intended to be permanent is unlikely to pass the test of reasonableness*' (NPPG Paragraph: 014 Reference ID: 21a-014-20140306).

Furthermore, requiring the removal of the building should its use cease is also unnecessary as one of the conditions of a prior approval in the GPDO 2015 (as amended) already makes provision for the removal of the building should the use cease for a period of 10 years from the grant of the prior approval -

Part 6 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) states that:

- (5) Where development consists of works for the erection, significant extension or significant alteration of a building and—*
- (a) the use of the building or extension for the purposes of agriculture within the unit permanently ceases within 10 years from the date on which the development was substantially completed; and*
 - (b) planning permission has not been granted on an application, or has not been deemed to be granted under Part 3 of the Act, for development for purposes other than agriculture, within 3 years from the date on which the use of the building or extension for the purposes of agriculture within the unit permanently ceased,*

then, unless the local planning authority have otherwise agreed in writing, the building or, in the case of development consisting of an extension, the extension, must be removed from the land and the land must, so far as is practicable, be restored to its condition before the development took place, or to such condition as may have been agreed in writing between the local planning authority and the developer.

Conclusion

Paragraph 55 and 56 of the NPPF makes clear that planning conditions should only be imposed where they are necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects.

In relation to the test of necessity, the key question is whether it would be appropriate to refuse the grant of the prior approval without the requirements imposed by the condition.

As assessed above, it has been concluded that the condition as currently worded, to impose a time limit to require removal of the building following cessation of use, is not necessary or reasonable and is not required to maintain the openness of the Green Belt or otherwise make the development acceptable.

The applicant is not applying to remove the condition in its entirety and would accept that the building remain for agricultural purposes only.

As such, the proposal to vary the wording of the condition is considered acceptable.

The representations received have been covered in the above report.

For the avoidance of doubt, the variation to the condition would vary the consent granted under the Prior Approval process under Article 3 Schedule 2 Part 6 Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Recommendation: Prior Approval Required and Granted

Conditions and Reasons:

- 1 This decision relates to drawings numbered Proposed agricultural storage unit - site plan and section plan JB-21-08-23-B; Proposed elevations and floor plan JB-21-08-23-A; Proposed site plan JB-31-05-23-B amended 19-7-23; Landscaping proposals ref: 210823.A and the development shall not be carried out except in accordance with the drawings hereby approved.
Reason. For the avoidance of doubt and to ensure a satisfactory standard of design pursuant to the policies of the Bury Unitary Development Plan listed.
- 2 The development hereby approved shall be carried out in accordance with the landscaping proposals and schedule ref JB.21.08.23.A received on 21/8/23A. The approved scheme shall thereafter be implemented not later than 12 months from the date the building is completed or first occupied or within the first available tree planting season. Any trees or shrubs removed, dying or becoming severely damaged or becoming severely diseased within five years of planting shall be replaced by trees or shrubs of a similar size or species to those originally required to be planted.
Reason. To secure the satisfactory development of the site and in the interests of visual amenity pursuant to Policies EN1/2 - Townscape and Built Design, OL4/5 - Agricultural Buildings and EN9/1 - Special Landscape Areas of the Bury Unitary Development Plan and chapter 15 - Conserving and enhancing the natural environment of the NPPF.
- 3 The building hereby permitted shall be used for agricultural purposes only (as defined in Section 336(1) of the Town and Country Planning Act 1990); in conjunction with the remainder of the holding as identified in the supporting information submitted with the application.
Reason: To ensure that the building is used solely for agricultural purposes connected with the working of the holding, and in accordance with Part 6 of the

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Town and Country (General Permitted Development Order) 2015 (as amended).

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
JT	25/10/23	DM	25/10/23