

Appeal by Mark Jagger

Land at Arthur Lane, Ainsworth BL2 5PN

Planning Application Number 69178

GROUND OF APPEAL

The appeal is against a refusal of planning permission on 1 June 2023 of a planning application (number 69178 dated 14 December 2022).

The application is a resubmission of application number 64967 which was approved subject to conditions on 19 February 2020 (see Document L). For various reasons, as explained in the letter from the architect which accompanied the new application (Document G), the development has not gone ahead. It is proposed to create a new dwelling by converting, part demolishing and extending existing buildings which have been used to house and shelter livestock.

A copy of the decision on application 64967 is attached together with the Planning Officer's report (Documents K and L). This application was submitted following a pre application enquiry and was supported by a Design and Access Statement, a Planning Statement, and a Structural Appraisal.

Responding to the pre application enquiry the Planning Officer, Tom Beirne, had concluded that "insufficient information has been submitted to give a solid steer" on a route forward but pointed out that "conversion to a dwelling may be acceptable if an existing building is of substantial construction and capable of conversion without significant rebuilding". A small extension may be possible. Where there are a number of structures it may be useful to consider removal of some to counterbalance the impact of any conversion/extension of any retained structure. Any domestic curtilage would need to be limited in size.

Mr Beirne's helpful comments were taken into account and further discussions took place before the application was submitted. It was accompanied by my Planning Statement (Document F) which was presented again with the appeal application.

Not unreasonably we thought that renewing the permission would be a simple exercise but the new application was allocated to a different Planning Officer whose interpretation of the same facts, planning policy and guidance was totally different, leading to the refusal which is now the subject of the appeal.

Unfortunately, it took nearly 6 months for the LPA to issue a decision, after the previous permission had expired. An email from the planning officer to the applicant's agent dated 28 March raised issues which I addressed in a supplementary statement. Copies of the emails and my response are attached as Document J.

Planning History

03/40511 – Planning permission granted for “infill and reshaping of land to improve drainage and allow better grazing for livestock”. The permission has been implemented but unfortunately the culvert under Arthur Lane has been blocked for many years, causing significant flooding and preventing the applicant from carrying out improvements to the buildings which would have made them capable of conversion to a dwelling (see Document H). The culvert was replaced by the Council last year.

64967 – Planning permission granted on 19 February 2020 for “demolition, conversion and extension of existing livestock buildings to create 1 no .single storey dwelling with enclosed garden and parking”. The permission has now lapsed.

Recent planning permissions for new dwellings in the immediate vicinity have set a precedent for allowing the current proposal.

- 52826 – Planning permission granted (20/10/2010) for conversion of swimming pool to dwelling at Sunnybank to the north of the site.
- 58134 – Planning permission granted on appeal for conversion to dwelling and extension of stable just beyond the northern boundary of the site.
- 60784 – Planning permission granted (25/1/2017) for conversion to dwelling and extension of stable on the opposite side of Arthur Lane at the rear of 41 Bury Old Road.
- 63221 – Planning permission granted (21/11/2018) for conversion and extension of the same building with a subterranean extension.
- 61734 – Planning permission granted (1/9/2017) for conversion of a large storage building to a dwelling with a front porch adjacent to 41 Bury Old Road.
- 63246 – Planning permission granted (8/11/2018) for demolition of the storage building and replacement with a new bungalow.
- 65373- - Demolition of stable and rebuilding as dwelling at rear of 41 Bury Old Road approved 1 December 2022.
- 67459 – Demolition of existing building and construction of new dwelling at 41 Bury Old Road approved 14 December 2021.
- 67550 – Conversion of stable to dwelling with extension at 41 Arthur Lane allowed on appeal 22 July 2022.

Planning Policy

Planning policies are contained in the old Bury Unitary Development Plan. Current planning guidance is provided by the National Planning Policy Framework which was produced in its latest version in 2021.

The UDP was adopted as long ago as 1997. It defines the boundaries of the Bury Green Belt. The site is within the Green Belt as is the surrounding land where permission has been granted for new dwellings as set out above.

POLICY OL1/2 – New Buildings in the Green Belt, states that the construction of new buildings in the Green Belt is “inappropriate development” with limited exceptions. “Very Special Circumstances” need to be demonstrated to justify inappropriate development.

POLICY OL1/4 – Conversion and Use of Buildings in the Green Belt states that conversion and reuse of buildings is not “inappropriate” and will be permitted providing that:

- a) It does not have a materially greater impact than the present use on the openness of the Green Belt and the purposes of including land within it.
- b) Any extension of re-used buildings, and any associated uses of land surrounding the building do not conflict with the openness of the Green Belt and the purposes of including land within it (e.g. because they involve extensive external storage, or extensive hardstanding, car parking, gardens, boundary walling or fencing).
- c) The buildings are of permanent and substantial construction, and are capable of conversion without major or complete reconstruction.
- d) The form, bulk and general design of the buildings are in keeping with their surroundings
- e) Suitable access and likely traffic generation can be accommodated without creating a traffic hazard or the need for major road improvements or lengthy new routes.
- f) All the necessary services can be provided without extensive works.
- g) It can be established by the applicant, to the satisfaction of the local planning authority, whether or not the building contains any protected species, such as bats or barn owls. Where it is shown that such species are present, measures to prevent damage to habitats will be required.

POLICY OL7/2 – West Pennine Moors states that the Council will control development to reduce any possible detrimental effects on the important character of the area.

POLICY EN9/1 - Special Landscape Areas states that any development will be required to be sympathetic to its surroundings in terms of its visual impact.

Other relevant policies include H1/2 – Further Housing Development, EN1/1 – Visual amenity and HT2/4 – Car Parking and New Development.

The NATIONAL PLANNING POLICY FRAMEWORK encourages the grant of planning permission for sustainable development which is in accordance with the development plan. LPAs “should approach decisions on proposed development in a positive and creative way” (para 38). The importance of pre application discussion and good design is identified.

Paragraph 149 of the NPPF is similar to UDP policy OL1/4 and new development continues to be inappropriate in the Green Belt with limited exceptions which are:

- a) Buildings for agriculture and forestry.
- b) Facilities for outdoor sport/recreation (in connection with an existing use or change of use), cemeteries and burial grounds and allotments.
- c) The extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building
- d) The replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
- e) Limited infilling in villages (unlike the UDP not “named villages”).
- f) Limited affordable housing.
- g) Limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings) which would:
 - Not have a greater impact on the openness of the Green Belt than the existing development; or
 - Not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.

Paragraph 150 states that certain other forms of development are also not inappropriate in the Green Belt provided that the buildings preserve its openness and do not conflict with the purposes of including land within it, including "the re-use of buildings provided that the buildings are of permanent and substantial construction".

"Inappropriate development" may be acceptable if "very special circumstances" can be proved

The NPPF emphasises the need for local planning authorities to boost the supply of housing to meet local housing targets in both the short and long term. There is particular emphasis to identify a rolling five year supply of deliverable housing land. Bury's Strategic Housing Land Availability Assessment sets out the latest housing supply position. This indicates that the Council is unable to demonstrate a five year supply of deliverable housing and this needs to be treated as a material factor when determining the planning application.

Justification

The refusal of the recent application is based on the Planning Officer's belief that the proposed development is "inappropriate development" in the Green Belt without "very special circumstances" to outweigh the harm to the Green Belt.

The development is not inappropriate development and the previous planning application was approved on this basis. My statement concluded as follows:-

"In my opinion, the proposal is appropriate development and will not be harmful to the Green Belt either in principle or in the detail.

- The existing buildings have been used as stables and for agricultural purposes. The redevelopment of previously developed land, as represented by the stabling, is appropriate development.*
- The development would meet an identified housing need on providing a home for one of the applicant's children who would otherwise not be able to afford a house in the area.*
- The development is focussed on an existing building that is capable of conversion with little alteration.*
- The new elements replace existing buildings but with a reduced volume.*
- The appearance of the buildings will be much improved, with the design and materials appropriate to the area and in character with surrounding buildings.*
- The domestic curtilage will be kept to a minimum, with an enclosed courtyard at the rear of the dwelling, screened by an existing hedge. Other native hedge planting will be carried out.*
- The site may not be in Ainsworth village but it is in a sustainable location close to village facilities and next to the terminus of a bus route.*
- Electricity and mains water are available. A private treatment plant for sewage would be installed."*

The previous Planning Officer analysed the proposal in the context of NPPF guidance (then paragraphs 79, 145 and 146) and UDP Green Belt policies and recommended approval to Development Control Committee. To quote:-

- *As the proposal would be on previously developed land and involves the conversion of an existing building with a reduction in overall volume, it is considered to be acceptable in principle and in accordance with the provisions of Paragraphs 79, 145 and 146 of the NPPF.*
- *A structural report has been submitted with the application, which confirms that the prefabricated building is capable of conversion.*
- *The proposed use would not have a materially greater effect upon the openness of the Green Belt and as such, would be in accordance with Policies H1/2 and OL1/4 of the Bury Unitary Development Plan and the NPPF”.*

The first Planning Officer had followed the guidance of the NPPF in approaching the decision” in a positive and creative way”. The second Planning Officer took the opposite approach. She did not accept the architect’s structural appraisal of the building and asked for a structural engineer’s survey. This was submitted but, in her opinion, it was still not good enough as made clear in her Report. She is entitled to an opinion but she is not a structural engineer and should have accepted the survey result in the absence of any clear contrary evidence.

The Officer’s belief is that the appeal building is “tantamount to a new build”. She quotes figures to try and justify that the volume and floor area are larger than the existing development which is not the case when the whole of the existing buildings is taken into account.

On the basis of her volume and floor area figures she contends that the proposals are considered to be inappropriate development which, by definition, is harmful to the Green Belt.

On a more positive note she thinks that “the proposed design and materials are considered appropriate and in keeping with the site and surroundings and would not be a prominent feature in the landscape”.

Much of the rest of the Report is also positive. The new dwelling could contribute to the Borough's housing supply. It is accessible to services and amenities. There is no impact on heritage assets. There are no objections on ecological grounds.

The Planning Officer claims that, just because it was not implemented, the previous approval is "given minimal weight in this decision and does not constitute the *very special circumstances*, required by paragraph 148 of the NPPF". On the contrary, it is a clear and obvious precedent for approving an identical application.

Notwithstanding the favourable comments the application was refused because the planning officer considered the proposal to be tantamount to a rebuild of part of the buildings with a greater floor area and volume and therefore inappropriate development in the Green Belt.

The volume of the existing buildings as a whole is 520 cubic metres which will be reduced to 443 cubic metres. The assessment of the proposal should not be restricted to arguments about volume. A Court of Appeal judgement (Turner v Secretary of State 2016) is helpful. Paragraph 14 of the judgement states "The concept of openness of the Green Belt is not narrowly limited to the volumetric approach.....The word "openness is open textured and a number of factors are capable of being relevant *when applied to the particular facts of a specific case*. Prominent among these will be factors relevant to how built the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are no means the only one) and factors relevant to the visual impact on the visual aspect which the Green Belt presents".

Conclusion

- The applicant followed NPPF guidance in submitting a pre-application enquiry before making the first planning application.
- The previous Planning Officer also followed NPPF guidance in approaching the decision in a positive and creative way. The second Planning Officer did not.
- The decision on the first application confirms that the proposal is “appropriate development” in the Green Belt and is a precedent for allowing the appeal.
- The Structural Appraisal confirms that part of building is capable of conversion.
- The remainder would be replaced by extensions of similar proportions to the existing buildings but reduced in size.
- The current buildings are unsightly and their appearance will be much improved.
- Even the Planning Officer accepts that the design and materials are “appropriate”. If the Inspector deems the development to be inappropriate this, together with the previous approval, is a “very special circumstance” for allowing the appeal.

It would be perverse and unreasonable to make a decision contrary to the previous approval. Planning permission should have been granted subject to the same conditions as before and accordingly the appeal should be allowed.

John Hodgkinson BA, MSc