



Development Management  
Bury Council  
3 Knowsley Place  
Duke Street  
Bury  
BL9 0EJ

Our Ref: MJ/RG/G315/L001  
Date: 9<sup>th</sup> December 2023

Dear Sir / Madam

**SECTION 73 OF THE TOWN AND COUNTRY PLANNING ACT 1990**  
**ABBOTTS HALL, WOODHEY ROAD, HOLCOMBE BROOK, RAMSBOTTOM, BL0 9RD**  
**REMOVAL OR VARIATION OF CONDITIONS 1, 2, 4, 5 AND 6 OF PERMISSION REF 69054**

On behalf of Mr. & Mrs. Abbott, we hereby submit this application seeking the removal or variation of the above conditions.

Application 69054 was approved on 22<sup>nd</sup> November 2023 in respect of the removal of Condition 3 of planning permission ref. 54822 to remove the occupancy restriction that was associated with the dwelling at Abbots Hall.

The removal / variation of other conditions was discussed with the LPA during the course of the application, and a judgement was made to await the removal of former Condition 3 prior to addressing the other conditions pursuant to this new S73 application.

By way of context, it is worth noting that Section 187A of the Town and Country Planning Act 1990 provides for enforcement of a planning condition by the serving of a Breach of Condition Notice. In this case, no Breach of Condition Notice has been served by the LPA in respect of any condition.

Section 171B(3) of the Act provides that no enforcement action can be taken against a breach of a planning condition after the end of the period of ten years from the date on which the breach first occurred. In effect, there is a ten-year "immunity" rule applicable to the service of a breach of condition notice.

Bearing mind the planning history (and immediately before the recent S73 approval), that 10 year immunity period had long expired, as the subject conditions had been imposed as part of either or both the original outline planning permission granted in September 1989 under permission C/23055/89 (over 34 years ago) and/or the subsequent Reserved Matters approval C/27209/92 granted on 9 July 1992 (over 31.5 years ago).



Essentially the same conditions were then carried forward as part of the approval of subsequent S73 application 54822 (such that the dwelling and agricultural building could be occupied by persons employed in aquaponics as well as agriculture). This was approved on 20 March 2012 - approaching 12 years ago.

Throughout much of that long history spanning over three decades, both the house and the former agricultural building have existed and have not been the subject of any enforcement action in respect of any of the historic conditions. That confirms that no material planning concerns have arisen, because – if they had – the Council would have pursued enforcement action and served Breach of Condition Notices well before now.

Having said all of that, we do of course accept that those same conditions have now been rolled over again onto the recent S73 approval, so the purpose of this new application is to address those and seek their removal or variation.

We would highlight that the information relating to conditions at our disposal is limited. For example, while our client is certain that information was submitted pursuant to the discharge of certain conditions, they have not retained evidence of that (which is perfectly understandable given the passage of time). For example, our client advises that a company called Appleton prepared a landscaping scheme in respect that particular condition, which they understand was submitted to the LPA. But we can see no evidence of the discharge of any conditions on Bury's portal, which is hardly unusual when looking at very old planning permissions that were dealt with well before modern IT recording systems were introduced.

If Bury LPA has any information at its disposal that might assist this process, we would be grateful to have sight of it, but – pending that – this application is presented on the basis of the limited information we have had sight of.

### **Proposed Removal / Variation of Conditions**

#### **Condition 1**

*'The parking and servicing facilities shall be made available before the development is brought into use.'*

*Reason. To ensure adequate off-street facilities in the interests of highway safety pursuant to Policy HT2/4 - Car Parking and New Development of the Bury Unitary Development Plan.'*

For reasons set out above, we have not had sight of the approved drawings that show where parking and servicing was to be provided. If the LPA has those details, we would be grateful to see those, but it seems fairly certain / obvious that the parking and servicing area for the dwelling must have been shown within its immediate curtilage.



That domestic curtilage is obvious, as it is defined by a substantial stone wall, within which all parking and ‘servicing’ for the dwelling was created as part of the development and has remained in place and unchanged since the house was first occupied some time in 2013. That domestic curtilage – containing its parking and servicing - is clearly marked on the recently approved drawing 154 PLN L 01 as cited in Condition 7.

Given the above, we contend that Condition 1 is now superfluous to requirements. It serves no real purpose and it appears to have been complied with many years ago. Its wording – ie *“before the development is brought into use”* is no longer logical given that the house has been occupied for over a decade.

In terms of the parking and servicing associated with the former agricultural building, again we have not had sight of the approved details, but common sense and logic suggests that any such provision will have been shown immediately adjacent to that building, where historic Google imagery demonstrates it has been in place for a considerable period of time.

For those reasons – and given the lack of any enforcement action in respect of parking / servicing associated with either the former agricultural building or the dwelling - we suggest that this condition is no longer necessary and calls to be removed.

Alternatively, if the LPA is reluctant to remove it in entirety, we would be pleased to discuss a variation of its wording to reflect the fact that the parking / servicing provision has been in place and has functioned perfectly well for many years, and that it should remain in place until such point it is overridden by any new planning permission.

It is also worth highlighting the reason for imposing that condition:

*‘To ensure adequate off-street facilities **in the interests of highway safety**’*

Considering that reason, it is self evident that there are perfectly ‘adequate’ off street parking and servicing facilities in place, and there have been no highway safety incidents throughout the entire occupation of either the dwelling or the agricultural building. This calls into further question the necessity of this condition, as it is clear that the provisions already in place have not prejudiced the reason for imposing it (ie highway safety).

Cont/d ...



## Condition 2

*'The landscaping scheme hereby approved at the reserved matters stage shall be implemented to the written satisfaction of the Local Planning Authority not later than 12 months from the date the building(s) is first occupied. Any trees or shrubs removed, dying or becoming severely damaged or becoming seriously diseased within 5 years of planting shall be replaced by trees or shrubs of a similar size and species to those originally required to be planted to the written satisfaction of the Local Planning Authority.'*

*Reason. To secure the satisfactory development of the site and in the interests of visual amenity pursuant to Policy EN8/2 – Woodland and Tree Planting of the Bury Unitary Development Plan.'*

As noted earlier, this condition was imposed close to 32 years ago. We have not had sight of the landscaping scheme that was approved as part of the RM application, and as such we are unclear as to whether or not it was implemented (in part or in full). Our client advises that it was implemented, and – by way of example - has pointed us to the planting of a rosehip hedge along the lane that we are advised was put in place in the early 1990s. Again, if the LPA has any related information, we would like to have sight of that, and – if it is available – it will then be possible to review it and establish whether or not it was implemented and whether it still calls to be implemented.

Having said that, it is perfectly clear that the site has been suitably landscaped and that no issues in this regard have arisen over the passage of time. Certainly the Council has made no attempt to pursue enforcement action or (as far as we understand) raised any questions about landscaping. Irrespective of whether or not the precise landscaping details approved under reserved matters 32 years ago have been implemented, there is clearly no current landscaping concern, and as such we suggest that this condition is no longer necessary or fit for purpose, and it should accordingly be deleted.

## Condition 4

*'The agricultural buildings hereby approved shall be used exclusively for aquaponics and/or agriculture. Reason. To safeguard the character of the Green Belt and to ensure against inappropriate development in the Green Belt in accordance with Policy OL1/2 - New Buildings in the Green Belt of the Bury Unitary Development Plan and PPG2 - Green Belts.'*

The above condition clearly calls to be removed by virtue of the recent (20/07/2023) approval of application 69509, which granted Prior Approval for the change of use of the building to 3 houses (Use Class C3). It is a somewhat absurd position to have a live / recent permission in place for housing, but at the same time a condition carried forward from an approval over three decades ago that would prevent the implementation of that recent consent.



Indeed, at the recent Planning Committee (22<sup>nd</sup> November 2023) when application 69054 was approved, even the objector who spoke against that application highlighted to Planning Committee that this condition ***“makes no sense”***.

Irrespective of that, this condition no longer serves a proper purpose. There is no good reason to seek to restrict the building (with permission already in place for conversion to residential) in agricultural or aquaponics use. The reason for imposing the condition states:

*‘To safeguard the character of the Green Belt and to ensure against inappropriate development in the Green Belt.’*

Not only are Permitted Development rights already in place to convert the building to houses, but it is now NPPF policy to actively facilitate the reuse of agricultural buildings for alternative uses.

This condition therefore calls to be removed, but – if it provides the LPA with comfort – its wording could be adjusted to allow for the prospect of alternative uses that are the subject of permissions, along the following lines:

*‘The agricultural building shall be used exclusively for aquaponics and/or agriculture, unless a permission / prior approval is granted and subsequently implemented to reuse or redevelop the building for an alternative use or uses.’*

## **Condition 5**

*‘No development approved by this permission shall be commenced until a scheme for the disposal of foul and surface waters has been approved by the Local Planning Authority. Such a scheme shall be constructed and completed in accordance with the approved plans.’*

*Reason. To ensure a satisfactory means of drainage pursuant to Policy EN7/4 - Groundwater Pollution and Policy EN7/5 - Waste Water Management of the Bury Unitary Development Plan.’*

We are uncertain what, if any, drainage details were submitted to and approved by the LPA pursuant to this condition.

Our client has provided us with a drainage plan showing how the house is drained for both surface water and foul (see *Annex A*).

Our client also advises that, as part of the construction of Woodhey High School in the early 1980s, a major new sewer was installed, and that that the foul drainage from the dwelling



connects to that. Our client recalls that this was subject to an official connection that was approved by Mr Kevin Dearden (Bury's Building Inspector at the time).

We have no paperwork to back that up, but perhaps the LPA has this in its possession?

Irrespective of that, both the dwelling and the agricultural building have existed and been occupied for well over a decade, and it is evident that both are satisfactorily drained and no drainage-related issues or concerns have arisen throughout that lengthy period.

The reason for imposing this condition is:

*'To ensure a satisfactory means of drainage'*

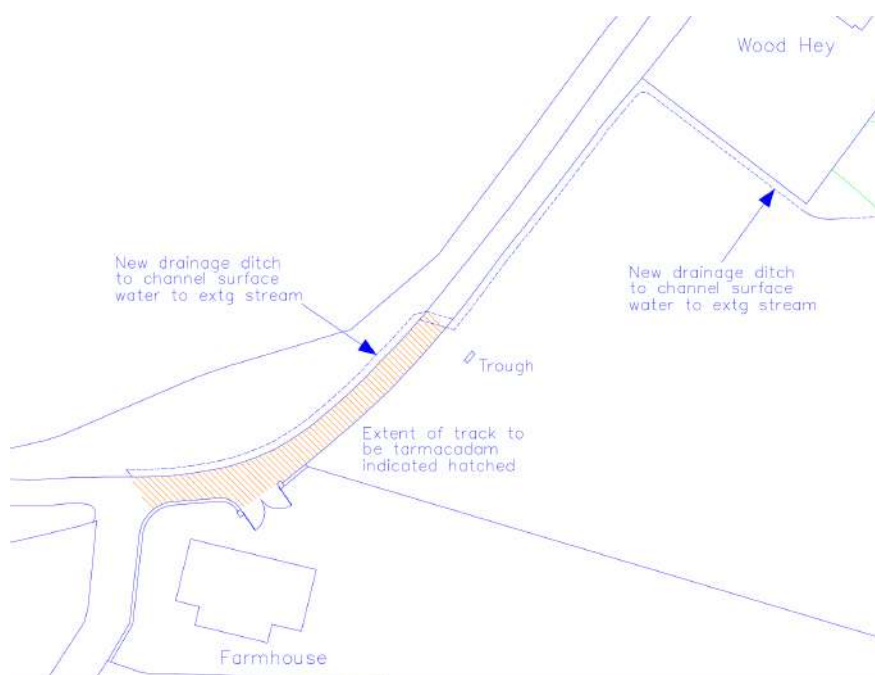
We suggest that all evidence points to the fact that the drainage that is in place, and has been in place for well over a decade, is *'satisfactory'*, and as such this condition no longer serves a meaningful purpose, is not necessary and ought to be removed.

## Condition 6

*'The highway improvements indicated on plan reference cm-01 shall be implemented to the written satisfaction of the Local Planning Authority before the buildings hereby approved are brought into use.'*

*Reason. To ensure good highway design in the interests of road safety pursuant to Policy EN1/2 Townscape and Built Design of the Bury Unitary Development Plan.'*

Approved drawing ref: cm-01 is reproduced below:





That drawing indicates two 'works' associated with the highway (which is owned by the applicant), namely:

- The tarmacking of a section of lane immediately outside the dwelling; and
- The installation of drainage ditches on either side and crossing the access lane.

Our client advises that both requirements were completed many years ago. There is evidence of tarmac on the lane, albeit this has been worn away over the passage of time, and our client advises that they annually patch this up and carry out basic repairs.

Likewise, there is evidence on the ground of the installed drainage ditches at the side of the road.

We are uncertain whether any of those works have ever been inspected by the LPA, and it seems that no approaches have been made to the applicant in this regard, or any suggestion that this condition has not been complied with.

Furthermore, having regard to the reason for imposing the condition (*'to ensure good highway design in the interests of road safety'*), there have been no road safety incidents arising from the use of the dwelling or the former agricultural building over the past 12 or so years whilst those have existed.

Notwithstanding the fact that the works were undertaken in accordance with the condition, our client advises that they fully intend to renew the tarmac in the near future, and as such we request that this condition be varied to state:

*'Within 12 months of the date of this permission, the tarmac as indicated on plan reference cm-01 shall be repaired / renewed.'*

## **Overall Conclusions**

It could be queried why the above conditions have been rolled over onto the new S73 permission, given that, on the whole, they no longer serve any useful purpose and are no longer necessary. However, the main focus of the recently approved application was the removal of the agricultural occupancy condition. Now that has succeeded, this follow on S73 application represents a 'mopping up' exercise to clear away conditions that are redundant.

In some cases, the wording of the conditions renders them impossible to comply with. For example, bearing in mind the buildings have been in use for over a decade, statements such as *'before the buildings hereby approved are brought into use'* are obviously not appropriate.

In the case of Condition 4, this raises obvious inconsistency with the recent (20/07/2023) approval of application 69509, which granted Prior Approval for the change of use of the building to 3 houses (Use Class C3).



In most cases, we have suggested that the common sense and pragmatic approach would be to remove the conditions in entirety, but we have also suggested possible alternative wording in certain cases. We would of course be happy to discuss such wording with the LPA during the course of the application.

We look forward to receiving confirmation of receipt and validation of the application, and please do not hesitate to contact Richard Gee at the above offices if further information is required.

Yours faithfully  
for Roman Summer Associates Ltd

Richard Gee  
**Director**



## Annexe A – Drainage Plan

