



Appeal Decision

Site visit made on 5 November 2024

by N Duff BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2024

Appeal Ref: APP/R2330/W/24/3346109

Land opp. 18 Haslingden Old Road, Oswaldtwistle BB1 2DY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr T Jamieson against the decision of Hyndburn Borough Council.
 - The application Ref is 11/24/0121.
 - The application sought planning permission for erection of agricultural building without complying with a condition attached to planning permission Ref 11/23/0440, dated 13 March 2024.
 - The condition in dispute is No. 7 which states that: *Notwithstanding the provisions The Town and Country Planning (Use Classes) (Amendment) (England) Order 2015, or any equivalent Order following the revocation and re-enactment thereof (with or without modification), the building hereby approved shall only be used for the housing of livestock, or storage of agricultural machinery/equipment, in conjunction with the remainder of the holding.*
 - The reason given for the condition is: *In order to ensure the building is used for agricultural use only and to protect the landscape quality of the open countryside in accordance with Policy DM34: Development in the Green Belt and Countryside area.*
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Decision

1. The appeal is allowed and planning permission is granted for erection of agricultural building at Land opp. 18 Haslingden Old Road, Oswaldtwistle BB1 2DY in accordance with the application Ref 11/24/0121, without compliance with condition number 7 previously imposed on planning permission Ref 11/23/0440 dated 13 March 2024 and subject to the attached Schedule of Conditions.

Application for costs

2. An application for costs was made by Mr T Jamieson against Hyndburn Borough Council. This application is subject of a separate decision.

Procedural Matter

3. A revised National Planning Policy Framework (the Framework) was issued on 12 December 2024. Whilst some paragraph numbers have changed, the relevant paragraphs and parts of paragraphs identified as directly affecting this case have not been amended. Therefore, in this case it has not been necessary to consult the parties on the revised Framework.

Main Issue and Background

4. The condition in dispute restricts the use of the building for agricultural use only, which has effectively removed permitted development (PD) rights from the proposed building which could have been exercised to change the use of the building to alternative uses subject to prior approval. The justification for imposing the condition was to ensure that the building stays in agricultural use and to protect the landscape quality of the open countryside in accordance with policies in the Hyndburn Borough Council Development Management DPD (2018) (DPD) and the Hyndburn Borough Council Core Strategy (2012) (CS).
5. The Council's evidence suggests that the condition seeks to prevent an accumulation of redundant buildings which could benefit from PD rights in the future which could be harmful to the landscape character and visual appearance of the area. The appellant contends that the condition is not necessary, reasonable and not precise and seeks to remove it.
6. The main issue in this appeal is whether condition 7 is reasonable and necessary regarding the character and appearance of the area with particular regard to the cumulative impact of buildings of this nature resulting in an unsustainable pattern of development within the Green Belt.

Reasons

7. The site is located within the Green Belt on a moderately sized slice of land off a main road leading into Blackburn. The area of the site where the proposed building is to be located is in an elevated position on a hill slope. Large poultry sheds of a neighbouring unit are located to the east separated by a mature hedgerow and trees, with development on the edge of Blackburn visible to the north and west.
8. The area has an edge of town semi-rural character along Haslingden Road with a ribbon of residential and mixed use development on the southern side of the road, sporadic agricultural units are located in the general area to the east.
9. The Council has restricted the use of the proposed building to agricultural only in order to protect the landscape character and visual appearance of the area which is within the Green Belt, to prevent an unsustainable pattern of development.
10. DPD Policy DM34 which lists types of new buildings that will be permitted in the Green Belt and Countryside Area, the list is silent with regard to new agricultural buildings. However, the policy does set out relationships to other policy documents such as the Framework which provides clear direction with regard to development in the Green Belt.
11. Paragraph 154 of the Framework sets out that development is inappropriate in the Green Belt with an exception being buildings for agriculture and forestry. The Council stated in its officer's report for the development that the proposal for the agricultural building was not inappropriate development in the Green Belt and I concur with this.
12. The building was approved by the Council which assessed the building against policies Env 6 of the CS and DM26 of the DPD. Between them these policies seek to ensure that new developments deliver a high-quality design that maintains and enhances local distinctiveness, including the character and

quality of the landscape with suitable height and massing, building type and details and materials. The Council concluded that the proposed development was compliant with these policies.

13. With regard to condition 7, the Framework sets out that conditions should be kept to a minimum and only imposed where necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. A condition must meet all six tests to be justified. The Framework is clear at paragraph 55 that planning conditions should not be used to restrict national PD rights unless there is clear justification to do so. Further, the Planning Practice Guidance (PPG) states that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. The appellant has provided two appeal decisions¹ which support this approach.
14. The Council has stated that the condition to prevent changes of use through the provisions in The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) under Schedule 2, Part 3 Classes Q, R and S would guard against a proliferation of agricultural buildings where it may be the intention of the applicant to establish an agricultural building solely in order to benefit from these PD rights in the future. Whilst according to the Council, this may be the case within their administrative area, I have no evidence to demonstrate that there are currently many redundant agricultural buildings, to which this development could contribute. Furthermore, due to the development being a single agricultural building, on a modest parcel of land, I have no evidence before me to suggest that this development would contribute to an unsustainable pattern of development.
15. The agricultural building was assessed against local and national planning policy and subsequently granted permission by the Council. I consider that restricting changes of use would not be necessary as the change of use of the building would either require a planning application to be assessed by the Council against the development plan and relevant material considerations such as the Framework. Or, if eligible for conversion, exercising rights under Classes Q, R or S of Schedule 2, Part 3 of the GPDO would need to be assessed against a list of criteria, which under the current GPDO would require prior approval of the authority. Furthermore, these rights could only be exercised after a period of at least 10 years dependent on the circumstances of the site. Due to this, I am satisfied that adequate controls remain in place, irrespective of the condition in dispute, to protect the character and appearance of the area, to ensure a sustainable pattern of development in the area located within the Green Belt.
16. Therefore, for the reasons mentioned I do not find condition 7 to reasonable or necessary to prevent harm to the character and appearance of the area or to comply with Policies BD1 and Env 2 of the CS or DPD policy DM34 which between them seek to maintain the existing pattern of development and protect the natural environment including within the Green Belt.

Conditions

17. The PPG states that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original

¹ Appeal Ref: APP/B2355/W/17/3188367 & Appeal Ref: APP/B2355/W/17/3174775

planning permission. I shall therefore re-impose all conditions that remain relevant, however I have renumbered those conditions from condition 6 onwards to take account of the deleted condition 7.

18. The PPG states that the time limit for the commencement of development cannot be altered from the original permission, therefore the time limit for commencement of development has been amended to reflect three years from the date of the original planning permission.

Conclusion

19. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition and restating those undisputed conditions that are still subsisting and capable of taking effect.

N Duff

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun not later than 13th March 2027.
- 2) The development shall be carried out in accordance with the following documents unless otherwise required by the conditions below:
 - (a) The planning application form and Location Plan received by Hyndburn Borough Council on 2nd November 2023
 - (b) Plans by HP & DA Ltd and supporting documents received by Hyndburn Borough Council on 2nd November 2023

TJ-25-03-23-C access detail
Planning Statement
Planning Statement B
TJ-25-09-23-A details of proposed building
TJ-25-03-23-B proposed site plan
- 3) Construction deliveries to and from the site and construction works shall not take place except between 8.00 and 18.00hrs Monday to Friday, 09.00 to 13.00hrs on Saturdays, and will not take place at any time on Sundays and Bank Holidays, unless otherwise agreed in writing with the local planning authority. All works will be undertaken in accordance with BS5228:2009.
- 4) Measures shall be in place to prevent nuisance being caused to residents from noise, dust and vibration arising from the building works prior to the commencement of development works, and shall be retained for the duration of construction.
- 5) Before the development hereby permitted becomes operative, (Ref. Drawing no. T5-25-03-23-C Access Detail) nothing in the visibility splay shall be reduced to and be permanently maintained at a height of not greater than 1m above the crown level of the carriageway of Haslingden Old Road.
- 6) Before the access is used for vehicular purposes, that part of the access extending from the highway boundary for a minimum distance up to the gates shall be appropriately paved in tarmacadam, concrete, block pavements, or other approved materials.
- 7) Prior to tree felling or use of the agricultural building hereby approved a satisfactory landscaping scheme, which shall include a minimum of 6 standard UK native trees (8-10cm girth/2.5-3.0m height) and UK native hedge planting bounding the replacement highway fencing scheme of no less than 43m, shall be submitted to and approved in writing by the Local Planning Authority. The landscape scheme shall include the number of plants, species, planting size, planting methodology, British Standards and location of the planting, and annual maintenance schedule. The work described in the scheme shall be carried out strictly in accordance with the approved details and shall be retained in this manner thereafter. The approved scheme shall be implemented during the first planting season following the completion of development and any tree or shrub planted which dies or is felled, uprooted, wilfully damaged or destroyed in the first five year period commencing with the date of planting shall be replaced by the applicants or their successors in title.

- 8) No tree felling, removal of undergrowth, or similar shall take place between 1 March and 31 August inclusive, unless a competent ecologist has undertaken a careful, detailed check for active bird nests immediately before work is commenced (no later than 24 hours before commencement), and provided written confirmation that no birds or their nests will be harmed and/or appropriate measures in place to protect nesting birds on site. Any such written confirmation must be submitted to the Local Planning Authority. All British birds, their nests and eggs are protected by Section 1 of the Wildlife and Countryside Act 1981, as amended. It is an offence to remove, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent does not provide a defence against prosecution under this act.
- 9) Unless otherwise approved in writing by the Local Planning Authority, the development shall include the provision of two building mounted Swallow nest cups which shall be installed during the construction phase in accordance with manufacturer's specification and to British Standard guidance. The cups shall be so retained in this manner thereafter.

End of Schedule