



Appeal Decision

Site visit made on 10 November 2025

by **L Gardner MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 November 2025

Appeal Ref: APP/D5120/W/25/3371427

Honeydale Farm, 217 Maidstone Road, Sidcup, Bexley DA14 5AW

- 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 MJ Fruit Farms against the decision of the Council of the London Borough of Bexley.
 - The application Ref is 25/00870/FULM.
 - The application sought planning permission for “Erection of a detached building for use as a storage and fruit packing facility incorporating first floor offices for existing farm unit, relocated 15m from the previously approved site under planning references 97/2584F, 98/1765F and 01/03056/FUL, together with widening of the existing track for vehicles” without complying with a condition attached to planning permission Ref 07/15225/FULM, dated 24 April 2008.
 - The condition in dispute is No 11 which states that:
 - *“The building shall remain ancillary to the dominant agricultural use of the land and be used solely as a storage and packaging facility for agricultural produce with first floor offices for existing farm unit whilst the whole of the land within the planning unit known as Honeydale and Gains Farm, identified on the application plan, is in agricultural use.”*
 - The reason given for the condition is:
 - *“Any other use would be inappropriate in the Metropolitan Green Belt”.*
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a detached building for use as a storage and fruit packing facility incorporating first floor offices for existing farm unit, relocated 15m from the previously approved site under planning references 97/2584F, 98/1765F and 01/03056/FUL, together with widening of the existing track for vehicles at Honeydale Farm, 217 Maidstone Road, Sidcup, Bexley DA14 5AW in accordance with the application Ref 25/00870/FULM, without compliance with condition numbers 1, 3, 4, 5, 6, 7, 8, 10, 11, 12 and 13 previously imposed on planning permission Ref 07/15225/FULM dated 24 April 2008 and subject to the following conditions:
 - 1) The development hereby permitted shall not be carried out otherwise than in complete accordance with the approved plans, being Drawing Nos. NJL/Hon.2076.01, 02, 03, 04, 05 and any approval granted subsequently pursuant to this permission.
 - 2) No part of the yard area, surrounding the storage and packing facility building, hereby approved, shall be used for open storage purposes.

Background and Main Issues

2. Honeydale Farm is an agricultural unit which, since the late 1990s, has largely been based on the processing and packing of imported agricultural produce. Despite earlier permissions for storage and packing facility buildings, the building to which this appeal relates was constructed via a 2008 permission (reference 07/15225/FULM) which approved the building in a slightly different position to the earlier consents. Permission has since been granted in January 2023 for the extension of the existing building, albeit the extension of the building is not relevant to the appeal before me.
3. Condition 11 imposed on the original permission restricts the use of the building to remain ancillary to the dominant agricultural use of the land and be used solely for agricultural produce. The reason given for the imposition of this condition relates to the appeal site's location within the Metropolitan Green Belt, the Council stating that the agricultural link formed the basis for granting planning permission, where development would have otherwise been deemed inappropriate.
4. In refusing the application to remove condition 11, the Council consider that the proposal falls outside of the lawful scope of Section 73 (S73) of the Town and Country Planning Act 1990 (the Act).
5. It therefore follows that the main issues in the appeal are:
 - whether the proposal can be determined under S73 of the Act; and if so,
 - whether the disputed condition is necessary or reasonable to make the development acceptable in planning terms, having particular regard to the site's location in the Green Belt.

Reasons

Procedure

6. As noted above, this appeal is pursuant to an application made under S73 of the Act. The Council is of the view that the disputed condition forms an integral part of the approved development in tying the function of the building to an agricultural use. The Council contend that the removal of condition 11 would result in a development which is materially different in nature and function to that permitted, and therefore that its removal would be beyond the scope of S73.
7. S73 of the Act allows for a grant of permission for the development of land without compliance with conditions subject to which a previous permission was granted. Whilst it has been held that the scope of S73 is not limited to minor material amendments¹, the Courts² have established that an application under S73 may not be used to obtain a permission that would require a variation to the terms of the 'operative' part of the planning permission, which would include, the description of the development for which the original permission was granted.
8. More recently, this principle was reinforced by the Court of Appeal³. In that case, the Judge concluded that in granting permission, there had been a conflict with the operative part of the permission which rendered the S73 permission unlawful.

¹ *Armstrong v SSLUHC* [2023] EWHC176

² *John Leslie Finney v Welsh Ministers* [2019] EWCA Civ 1868

³ *Test Valley Borough Council v Chaia Fiske* [2024] EWCA Civ 1541

9. It therefore follows that the purpose of S73 is not to amend the description of development and that, if amending a condition would result in a conflict between it and the description of development, then that particular amendment is beyond the scope of S73.
10. The original description of development is explicit that the building has permission as a 'storage and fruit packing facility'. It is also clear that the offices within the building are related to the existing farm unit. Condition 11 provides clarification that the use of the building shall relate to agricultural produce as an ancillary function to the agricultural use of the land.
11. The removal of this condition would not lead to a contradiction or inconsistency to the original description of the development. It would remain a permission for a building specifically for the purposes of a storage and fruit packing facility by virtue of the description of the development. The operative part of the permission would therefore remain intact, albeit in an unconditioned way. I am therefore satisfied that the development proposed does fall within the scope of S73 of the Act and the appeal can proceed on this basis.

Green Belt

12. The National Planning Policy Framework (the Framework) attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, with the essential characteristics of Green Belts being their openness and their permanence.
13. Planning permission was originally granted for the building because of the justified link to the operational needs of the agricultural holding. In implementing the original permission and constructing the building as it exists, there is an established impact on the Green Belt. The removal of the disputed condition would have no bearing on the physical characteristics of the existing building.
14. In the absence of a condition tying the building to the dominant agricultural use of the land, there would be scope for a wider unrestricted use of the building, either through the terms of the description of development for the permission, or a change of use which may arise by the operation of the law.
15. However, there is little in the evidence before me to suggest that the subsequent use of the building, potentially outside of purposes relating to agriculture, would be implicitly harmful to the Green Belt or its openness. Condition 11 is therefore not necessary or reasonable to make the development acceptable in planning terms, having particular regard to the site's location in the Green Belt.

Other Matters

16. Letters of representation have been received objecting to the removal of the condition on various grounds, partially around the uncertainties as to what the building would be used for. However, the appellant is not required to provide this information in order for me to make a judgement as to whether the disputed condition is necessary for its original purposes.
17. Both interested parties and the Council have referenced the potential highways impacts, which could amount from the use of the building were it not to be associated with agricultural purposes. Nevertheless, there is little before me to suggest that the removal of condition 11 would lead to an actual increase in

vehicle traffic which would not be capable of being catered for within the existing highway network.

18. Concern has also been raised in relation to the potential impacts on the living conditions of neighbouring dwellings, including in the context of the Agent of Change principle and that the building could be used to store gas in a dangerous manner. During my site visit, I noted that the building is relatively well separated from existing residential dwellings. I have little substantive evidence before me to suggest that there is an intention to store gas within the building, or that the removal of an agricultural link to the building would be implicitly harmful to neighbouring living conditions.

Conditions

19. Planning Practise Guidance makes clear that decision notices for the grant of planning permission under S73 should also restate the conditions imposed on earlier permissions that continue to have effect.
20. The development has commenced and therefore there is no need for me to re-impose condition 1. The Council has recently granted permission for the separate removal of condition 12 from the original planning permission (reference 25/00871/FULM). In doing so, it has consolidated the original conditions imposed, reimposing only the conditions which remain necessary, relevant and enforceable.
21. Based on my findings above in relation to condition 11, there would remain two operative conditions, one relating to the approved plans, and the other restricting open storage within the yard. I find both of these conditions remain reasonable and necessary to define the development and to protect the amenities of the locality, and therefore I have imposed them on my formal decision above.

Conclusion

22. For the reasons given above the appeal should be allowed, and a new planning permission is granted, without conditions 1, 3, 4, 5, 6, 7, 8, 10, 11, 12 and 13.

L Gardner

INSPECTOR