



Appeal Decision

Site visit made on 25 November 2025

by **H Senior BA (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3rd March 2026

Appeal Ref: APP/R0660/W/25/3370872

New House Farm, Congleton Road, Marton SK11 9HF

- 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 imposed on a grant of prior approval required under Article 3(1) and Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Kyle Hares against the decision of Cheshire East Council.
 - The application Ref is 25/0269/VOC, dated 23 January 2025, was refused by notice dated 16 May 2025.
 - The application sought planning permission for prior approval of the change of use of the ground floors of two agricultural buildings to a flexible use (C1 use - hotel) without complying with a condition attached to planning permission Ref 20/2459M, dated 13 August 2020.
 - The condition in dispute is No 6 which states that: Prior to commencement of development, a detailed drainage strategy / design, ground investigation, and associated management / maintenance plan for the site shall be submitted to and approved in writing by the Local Planning Authority. The strategy and maintenance plans shall be implemented as approved prior to the use of the hereby approved development.
 - The reason given for the condition is: To ensure that the principles of sustainable drainage are incorporated into this proposal and maintained thereafter and to ensure that the proposed development can be adequately drained and to ensure that there is no flood risk on or off site resulting from the proposed development.
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Decision

1. The appeal is allowed and planning permission is granted for prior approval of the change of use of the ground floors of two agricultural buildings to a flexible use (C1 use - hotel) at New House Farm, Congleton Road, Marton SK11 9HF in accordance with the application Ref 25/0269/VOC, without compliance with condition number 6 previously imposed on a grant of prior approval Ref 20/2459M, dated 13 August 2020, and subject to the conditions in the attached schedule.

Preliminary Matters

2. Permission was granted by article 3(1) of Class R, Schedule 2, Part 3 of the General Permitted Development (England) Order 2015 (GPDO) for the change of use of agricultural buildings to a flexible use (C1 use- hotel)¹. The permission was granted subject to conditions, including a pre-commencement condition that a detailed drainage strategy be submitted to, and approved by, the Local Planning Authority. A further permission for building operations associated with the change of use was subsequently granted, also subject to conditions.² The Lead Local Flood Authority (LLFA) had no objections to the proposal, subject to the imposition of Condition 6.

¹ Ref 20/2459M

² Ref 21/3874M

3. The development has commenced, but condition 6 has not been discharged.

Main Issues

4. The main issues are whether the planning permission granted by prior approval is extant, and if so, whether condition 6 is reasonable and necessary.

Reasons

5. The development is the conversion of former agricultural buildings to a flexible C1 hotel use.
6. Condition 6 expressly prevents any development taking place before a detailed drainage strategy / design, ground investigation, and associated management / maintenance plan for the site has been submitted to and approved in writing by the Local Planning Authority. No such information was submitted for approval.
7. The Council contend that as the pre-commencement condition, which goes to the heart of the approval, was not discharged, the prior approval is time expired and there is no extant permission to vary. This is a matter of planning judgement and related to the significance of the condition to the permission.
8. Case law³ holds that a distinction has to be drawn between a condition which expressly requires action to be undertaken before development is commenced, and a condition which expressly prohibits any development taking place before a particular requirement has been met. It was held that it is necessary for the conditions both to be expressly prohibitive of commencement of development and to go to the heart of the permission; only when both tests are satisfied is it a condition precedent and there would be development without planning permission. If that is not the case, it would be a breach of the conditions and there would not be development without planning permission. Further case law⁴ endorses the need for the conditions to go to the “heart of the matter” to be a true condition precedent.
9. In this case, in order to convert the buildings a number of activities are required to take place such as re-roofing, dealing with damaged brickwork and bricking up existing openings. These activities would not alter the existing drainage of the site or restrict the installation of any required drainage scheme prior to the buildings being brought into use. It is therefore possible to alter the condition from a pre-commencement condition to enable the appellant to submit the required details prior to development being brought into use. For these reasons I do not consider that the condition goes to the heart of the development and therefore the proposal can be considered to be extant.
10. Nonetheless, the change of use from agriculture to a hotel could result in different operations being undertaken on the site during its use. Although the development lies within a low flood risk area, the LLFA required details of a drainage strategy to ensure that surface water run-off would not increase. No details were included in the original application but a condition to this effect was agreed with the agent prior to the Council granting consent. The parish council has also raised a concern that there are drainage issues in the area, the building works began some years ago, and yet a drainage strategy has not been provided. I see no reason to disagree

³ R (Hart Aggregates Ltd) v Hartlepool BC [2005] EWHC 840 (Admin) 179

⁴ Greyfort Properties Ltd v SSCLG [2011] EWCA Civ 908

with the Council or the LLFA that the submission of a drainage strategy is necessary to make the development acceptable in planning terms.

11. The appellant requested that the condition's trigger be changed from pre-commencement to when floor levels were changed. However, there is nothing before me to conclusively indicate that floor levels would be changed at any stage of the development. As such, I have amended the condition's trigger to require the submission and approval of the drainage information prior to the development's use.

Conditions

12. Planning Practice Guidance (PPG) sets out decisions concerned with the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect. As such, I have re-imposed those conditions with amendments to wording in accordance with best practice.
13. As the development has commenced, the standard commencement condition is not necessary. Condition 1 refers to the details submitted with the permission granted for application reference 20/2459M, and is imposed for certainty.
14. Condition 2 which relates to cycle storage is imposed to ensure there are sustainable transport options, and Condition 3 which relates to noise mitigation is imposed to safeguard the living conditions of nearby occupiers. Conditions 4 and 5 relating to soil and contamination are imposed in order to ensure imported soils or unforeseen site conditions do not pose health and safety hazards. Conditions 7 and 8 are imposed in order to safeguard biodiversity.
15. As discussed above, condition 6 is imposed to ensure the development has a sustainable drainage strategy and does not pose future flood risks.

Conclusion

16. I conclude that a condition that requires the submission of a sustainable drainage strategy is both reasonable and necessary, but that it need not be a pre-commencement condition. I am satisfied that this would meet the other tests for conditions set out in legislation and guidance. The appeal is allowed.

H Senior

INSPECTOR

Schedule of Conditions

- 1) Development must take place in accordance with the details submitted with application reference 20/2459M and is subject to relevant conditions set out in within Class R, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
- 2) Prior to use of the of the development hereby approved, scaled plans of cycle storage/parking required in association with the development shall be submitted to and approved in writing by the Local Planning Authority. The approved cycle storage/parking shall be implemented before the use of the development hereby approved and retained as such thereafter.
- 3) Prior to use of the development hereby approved, noise mitigation set out in acoustic report PDA Acoustic Consultants, Ref. J002927/4350/2/TD, shall be implemented in full and retained as such thereafter, for the purposes for which it was intended.
- 4) Prior to the importation of soil or soil forming materials to the site, details of contamination testing shall be submitted to and approved in writing by the Local Planning Authority and only soil that passes those tests shall be used within the site.
- 5) Any contamination found during the course of implementing the development hereby permitted that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended until a risk assessment has been carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found the development shall not resume or continue until remediation and verification schemes have been carried out in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority.
- 6) Prior to the use of the development hereby permitted, a detailed drainage strategy / design, ground investigation, and associated management / maintenance plan for the site shall be submitted to and approved in writing by the Local Planning Authority. The approved management and maintenance plans shall be implemented and retained as such thereafter.
- 7) No removal of any vegetation or the demolition or conversion of buildings shall take place between 1st March and 31st August in any year, unless a detailed survey has been carried out to check for nesting birds. Where nests are found in any building, hedgerow, tree or scrub or other habitat to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a report submitted to and approved in writing by the Local Planning Authority before any further works within the exclusion zone taking place.
- 8) Prior to the use of the development hereby approved, detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds including house sparrows, shall be submitted to and approved in writing by the Local Planning Authority. The approved features shall be permanently installed prior to the first use of the development hereby permitted and permanently retained thereafter.