



PLANNING SUPPORT STATEMENT

SECTION 73 APPLICATION TO REMOVE CONDITION NO6
ATTACHED TO PLANNING PERMISSION 2022/62/90954/E
“CHANGE OF USE OF AGRICULTURAL BUILDING AND LAND
TO EQUESTRIAN USE INCORPORATING 6 STABLES, INDOOR
MENAGE, TACKROOM AND EQUESTRIAN STORAGE

LAND OFF PAUL LANE, FLOCKTON MOOR,
HUDDERSFIELD

MR D HAIGH

JANUARY 2022

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1.0 INTRODUCTION

Planning permission was granted by the Council on the 24 November 2022 for ***“Change of use of agricultural building and land to equestrian use incorporating 6 stables, indoor ménage, tackroom and equestrian storage.”***

The relevant national planning policy in place at the time of the application was contained within National Planning Policy Framework section 13 *“Protecting Green Belt Land”*.

The planning permission was granted subject to a number of conditions. Condition 6 on the permission states:

“Notwithstanding the plans and details hereby approved, if the equestrian use ceases, within six months of cessation, all buildings and structures within the red line boundary shall be removed and a land restoration plan be submitted to and approved in writing by the Local Planning Authority. The land restoration shall include a full schedule and timetable of works. The land restoration scheme shall be carried out in complete accordance with the approved land restoration plan and retained thereafter.”

The reason stated for the imposition of the condition on the decision notice was:

“The proposed development is larger than is feasibly required for a new equestrian enterprise however it does seek to re-use an existing building with a use which is of a similar nature and so as to protect the openness and character of the Green Belt from encroachment in accordance with Policies LP56 and LP60 of the Kirklees Local Plan and Chapter 13 of the National Planning Policy Framework.”

It is contended that by reference to the relevant development plan policy (cited in the reasons for the imposition of the condition) and government policy and guidelines there is no justification for the imposition of the condition and this should be removed.

This statement first outlines the background to the proposal and the recent approval. The officer’s delegation report is then examined. Following this, advice on the imposition of

conditions set out in the NPPF and NPPG is set out, where it will be demonstrated that the condition does not pass the relevant “six tests” set out in the guidance.

Relevant development plan policy is examined and it will be demonstrated that there is no justification for the imposition of the condition on the basis of such policy.

Finally, issues that the proposal raises are set out and it is clearly demonstrated that the condition should be removed.

2.0 THE SITE, THE PROPOSAL AND BACKGROUND

The application site, is located off Paul Lane, Flockton Moor. The application site incorporates a large scale livestock building in landholdings which extends to 10 acres of agricultural land. The site has an existing surfaced vehicular access from Paul Lane.

Historically, the site which previously formed part of Beaconsfield Farm was sold off amongst other parcels of land and is no longer in operation.

Planning permission was sought for the conversion of the livestock building to equestrian use, together with the change of use of the land for equestrian purposes. As part of the change of use 6no stables, an indoor ménage, tackroom and equestrian storage (all within the existing building) were proposed. It should be noted that only changes required to the building to facilitate the equestrian use were internal alterations.

Internally, the stables were designed to British Horse Society Standards and the proposed changes to facilitate the use are solely internal.

Planning permission for the change of use was granted by the Council on the 24th November 2022. However, this was subject to a condition (No6) which requires the demolition of the building if the equestrian use ceases. This condition is considered to be wholly unreasonable and unjustified in planning terms. The approach is at odds with government policy and guidelines and its imposition cannot be justified in development plan terms. It is clear that the condition should be removed by reference to the development plan and government policy and guidelines, as will be outlined.

3.0 THE OFFICER'S DELEGATION REPORT

The following are comments on the officer's delegation report.

In the delegation report the officer describes the proposed change of use and states:

“As such the principle of providing the use via conversion clearly accords with the purposes of Local Plan policy LP60.”

The following analysis of the interrelationship of Policy 56 and 60 is then set out:

“The building is large but its conversion is supported by Local Plan policy LP60. However, the building is much more than required for an equestrian enterprise which does not even have to be within a building. Typically the stables would be small with a modest tackroom attached with an outdoor ménage.”

This analysis is wholly irrelevant and factually incorrect. The application put forward is for the reuse of the whole of the building and as can be seen from the approved plans the scale of the building allows facilities which would otherwise be external, such as a ménage to be incorporated within the building. That in itself limits the impact on the visual amenity of the Green Belt. It is not clear how the phrase ***“...which does not even have to be within a building”*** is justified. Equestrian enterprise by definition involves the use of the buildings in the Green Belt.

The following comment is also puzzling:

“As such there is scope that this development could cause harm to the Green Belt by the local authority permitting a change of use which will make a site which is much larger than actually required become previously developed/brownfield land.”

This is irrelevant to the consideration of the application. There is nothing in planning policy (either local or national) which suggests that a change of use to a use which would become brownfield can or should be prohibited. The Council are attempting to control the future development of the site which is not in any way relevant to the consideration of the proposal for determination.

The officer also suggests that the building is larger than that required. It is not clear how this conclusion has reached that, in that the site can readily incorporate six stables, a ménage, tackroom and equestrian storage, all of which are required for the development.

The officer then goes on to state:

“However, to protect the openness of the Green Belt from urban development and encroachment a condition will be applied that if the use hereby approved ceases the building shall be removed. This is atypical on applications for both new stables and agricultural buildings in order to protect the Green Belt in the future. As such it is still an applicable condition here and even more important given the proposed use site is larger than reasonably required for the proper functioning of an enterprise in relation to policy LP56.”

Clearly, the Council have not considered the advice set out in the NPPG ‘The Use of Planning Conditions’ as will be outlined below:

“Conditions requiring demolition of buildings which are imposed on planning permissions for change of use are unlikely to relate fairly and reasonably to the development permitted.”

This is outlined in more detail in section 4.12 (Planning Practice Guidance – The Use of Conditions) below.

4.0 PLANNING POLICY

By virtue of Section 38 (6) of the Planning and Compulsory Purchase Act 2004, the planning authority must determine the planning application in accordance with the statutory development plan (insofar as it is material to the application), unless material considerations indicate otherwise. The NPPF also advises of a presumption in favour of development which accords with the development plan. The importance of the statutory development plan in the decision making process necessitates an examination of the relationship between the policies and proposals of the plan and government guidance.

4.1 Central Government Policy Advice

It is considered that the following central government policy advice in the form of the National Planning Policy Framework and retained Circulars are relevant to the consideration of this application.

4.1.1 The National Planning Policy Framework

The following are comments on the advice in the Framework which is considered to be relevant to the consideration of the application:

Para 2 of the 'Introduction' sets out that:

“Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.”

Paragraph 56 of the NPPF is concerned with the use of planning conditions and states:

“Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects...” (TPC underlining).

It will be noted that in the case officer's delegation report there is no clear justification stated for the imposition of the subject condition, which for the reasons set out in his statement does not pass the “six tests”.

It is contended that the imposition of condition 6 on the planning permission fails these tests for the reasons set out in this statement.

Section 13 deals with Protecting Green Belt Land. At Para 147 it states:

“Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances.”

Para 148 goes on to state:

“When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the green belt. Very special circumstances will not exist unless the potential harm to the green belt by reason of inappropriateness and any other harm resulting from the proposal is clearly outweighed by other considerations.”

Para 150 states:

“Certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are:-

-d) the re-use of buildings provided that the buildings are of permanent and substantial construction;***
- e) material changes in the use of land (such as changes of use for outdoor sport and recreation....”***

In granting permission the Council concluded that the proposal conforms with this advice. It will be noted that the advice does not require the demolition of buildings where a change of use is granted, if that use ceases at some point in the future.

4.1.2 Planning Practice Guidance – The Use of Conditions

This advice is of particular relevance to the consideration of this application and the removal of the condition.

The advice at Section 1 states:

“When used properly, conditions can enhance the quality of development and enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission by mitigating the adverse effects of the development. The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable.”

Therefore the first question to ask in respect of the subject development is whether the proposal would have been refused without the subject condition? By reference to the National Planning Policy Framework in relation to changes of use of buildings in Green Belt and the Council’s own adopted Local Plan policies there is no requirement that following the change of use of an existing building if that use ceases essentially the building must be demolished. The Council’s requirement goes way beyond the scope of policy and sets up requirements that do not exist in policy terms (national or local). It is reasonable to conclude that planning permission would be granted without that condition.

The advice goes on to state:

“Planning conditions be only imposed where they are

- ***Necessary;***
- ***Relevant to planning; and***
- ***The development to be permitted;***
- ***Enforceable;***
- ***Precise; and***
- ***Reasonable in all other respects.”***

These are known as the “six tests”.

The advice goes on to state that the six tests must all be satisfied each time a decision to grant planning permission subject to conditions is made:

(i) Necessary

The advice states:

“A condition must not be imposed unless there is a definite planning reason for it, i.e. it is needed to make the development acceptable in planning terms...”

If a condition is wider in scope than is necessary to achieve the desired objective it will fail on the test of necessity.”

This application was for a change of use of the building. No policy or guidance requires buildings which change use to be removed if that use ceases to be. The condition is clearly wider in scope than is required to protect the Green Belt.

(ii) Relevant to Planning

It is not considered that the condition is not relevant in planning terms to the permission to which it is attached. The proposal is for the conversion of an existing building and clearly passes all the tests to be acceptable and the imposition of a condition which requires its demolition at a later date if the use ceases is well beyond the scope of the permission and not relevant to planning.

(iii) Relevant to the Development to be Permitted

The question must be asked as to whether the condition is fairly and reasonably related to the development to be permitted. It is quite clear that the advice states that it is not sufficient that a condition relates to planning objectives but has to be justified by the nature or impact of the development.

Furthermore, it states:

“A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development.”

By reference to the delegation report, the Council are clearly attempting to control the future use of the site, an issue clearly not created by the proposals the subject of this application.

(iv) Reasonable in all Aspects

The advice states:

“Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness.”

It is considered that it is wholly disproportionate, unreasonable and unjustifiable to impose a condition which requires the demolition of a pre-existing building which passes the tests for reuse in planning policy terms to be demolished if that use ceases. It is not a reasonable requirement.

The advice at Section 3 goes on to the imposition of conditions and states:

“Any proposed condition that fails to meet any of the six tests should not be used.”

The advice then goes on to outline specific circumstances where conditions should not be used:

(a) Conditions which unreasonably impact on the deliverability of a development.

Clearly, in requiring the subsequent demolition of these buildings it renders the proposal financially unviable. If the equestrian use ceased by virtue of the condition, a valuable asset which could be utilised for other

uses deemed appropriate in a Green Belt would be lost. It would mean that it would not be financially viable to proceed with the development.

This application was for a full change of use of a permanent building. It is interesting to note in relation to temporary permissions it states:

“A condition requiring the demolition after a stated period of a building that it is clearly intended to be permanent is unlikely to pass the test of reasonableness.

Conditions requiring demolition of buildings which are imposed on planning permission for change of use are unlikely to relate fairly and reasonably to the development permitted.”

The Council’s approach clearly flies in the face of this advice.

The advice then goes on to outline what options are available to an owner who does not wish to comply with the condition. It goes on to state:

“Some or all of the conditions could be removed or changed by making an application to the local planning authority under Section 73 of the Town and Country Planning Act 1990... In deciding an application under Section 73 the local planning authority must only consider the disputed condition that are subject of the application – it is not a complete reconsideration of the application.”

It is quite clear from the advice in the NPPG that the condition should not have been imposed. For the very same reason this Section 73 seeks that the Council rectify this matter by approving this application.

4.2 Local Planning Policy - Kirklees Local Plan

The Development Plan for the Kirklees District is the Kirklees Local Plan (2019). The site on the supporting proposals map is identified as being wholly within the Green Belt.

(i) **Policy LP56 – Facilities for outdoor sport, outdoor recreation and cemeteries**

The policy sets out that:-

“In the Green Belt proposals for appropriate facilities associated with outdoor sport, outdoor recreation or cemeteries will normally be acceptable as long as the openness of the Green Belt is preserved and there is no conflict with the purposes of including land within it. Proposals should ensure that:-

- “a. the scale of the facility is no more than is reasonably required for the proper functioning of the enterprise or the use of the land to which it is associated;***
- b. the facility is unobtrusively located and designed so as not to introduce a prominent urban element into a countryside location, including the impact of any new or improved access and car parking areas;***
- c. in the case of all-weather riding arenas or other facilities for the exercising of horses, the degree of engineering operation required and the resultant re-grading of land, including any earth mounding and retaining structures, does not result in incongruous or discordant land form out of character with its setting that cannot be mitigated through the use of appropriate hard and soft landscape techniques.”***

(ii) Policy LP60 – The re-use and conversion of buildings

This policy states:

“Proposals for the conversion or reuse of buildings in the Green Belt will normally be acceptable where:

- “a. the building to be re-used or converted is of a permanent and substantial construction;***
- b. the resultant scheme does not introduce incongruous domestic or urban characteristics into the landscape, including through the treatment of outside areas such as means of access and car***

parking, curtilages and other enclosures and ancillary or curtilage buildings;

- c. the design and materials to be used, including boundary and surface treatments are of a high quality and appropriate to their setting and the activity can be accommodated without detriment to landscape quality, residential amenity or highway safety.”***

Clearly in granting planning permission the Council concluded that the proposal conformed with these policies. It will be noted that neither party requires or sets out that a prerequisite to the grant of planning permission for a change of use is that the building must be demolished if that change of use ceases.

5.0 THE ISSUES – THE DEVELOPMENT PLAN AND OTHER MATERIAL CONSIDERATIONS

5.1 The Development Plan

The development plan is the starting point for the consideration of this application. It has been clearly demonstrated that the proposal complies wholly with the relevant policies of the development plan.

Development plan policy is examined in section 4.2.1 above. There are two specific policies against which the proposals were considered by the Council in determining the application:

- (i) Policy LP60 'The Reuse of Existing Buildings in the Green Belt' is considered to be the primary consideration. The Council clearly considered that the proposal passes the tests set out in the policy. It will be noted that there is no caveat in the policy or any of the supporting text which would require the demolition of the subject building if that use ceased. The Council have set up a test for such development that does not exist.
- (ii) In terms of Policy LP56, it is considered that this policy which relates to outdoor sport and recreation facilities more specifically relates to the construction of new buildings by reference to paragraph 149 of the NPPF, which states:

“A local planning authority should regard the construction of new buildings as inappropriate development in the Green Belt. Exceptions to this are...

b. The provisions of appropriate facilities in connection with the existing use of land or a change of use for outdoor sport, outdoor recreation...”

In any event, even if the policy is applied to a change of use there is no requirement in policy that the buildings must be demolished if the use ceases. That is a test and requirement that does not exist.

There is no conflict with planning policy.

5.2 **Other Material Considerations**

The following are issues which it is considered are material considerations in respect of the determination of this application, all of which support the removal of the subject condition.

5.2.1 **Government Guidance and Policy and the “Six Tests” for Conditions**

The subject condition falls to be considered in respect of “the six tests” set out in the NPPF and NPPG. As set out, this condition fails to meet a number of the six tests:

- (i) It is not necessary;
- (ii) It is not relevant to the planning permission being granted and is beyond the scope of the permission;
- (iii) It does not fairly and reasonably relate to the development to permitted; and
- (iv) Is not reasonable and places unjustifiable and disproportionate burdens on the applicant;

Specifically, the condition also fails the following test:

“A condition requiring the demolition after a stated period of a building that is clearly intended to be permanent is unlikely to pass the test of reasonable. Conditions requiring demolition of buildings which are imposed on planning permissions for change of use are unlikely to relate fairly and reasonably to the development permitted.”

The condition clearly and squarely fails to meet with all six tests for conditions and on the basis of government policy and guidance should be removed.

5.2.2 **The Future Use of the Building**

If in the future the equestrian use ceased the building (which is permanent) will still remain in the Green Belt and there would be numerous alternative uses for it, i.e. those

deemed appropriate within a Green Belt. If the landowner sought to either change the use or redevelop the site at some point in the future planning permission would be required and the acceptability of such proposals at that stage would be for the Council to determine. i.e. it would be in the Council's control. The Council cannot attempt to preclude alternative uses for the site in the future based upon the proposals which were presented. There is no justification whatsoever for doing so in the first instance and there is no justification for retaining the condition now.

The grant of planning permission for any future use should it arise is in the Council's gift and control. The Council cannot preclude future alternative uses of the site by requiring demolition of the building. This approach has no justification in terms of the relevant development plan policy; government policy guidelines in the NPPF and NPPG; and the approach to the use of conditions. The imposition of the condition is wholly unreasonable and unjustifiable.

5.2.3 The Council's Application of Policy

The Council's application of the relevant development plan policy seems muddled and confusing. The policies set out a number of tests which proposals for a change of use and equestrian use fall to be tested. No part of the policies or the supporting text in the Local Plan is there a prerequisite for the grant of planning permission for a change of use that a building must be demolished once a use as ceased. Likewise, the advice in the NPPF in respect of such proposals also does not require the demolition of buildings following a change of use.

It is considered that the Council's interpretation of policy is incorrect. The Council cannot prejudge or control future uses of this site via condition. If at some point in the future the applicant sought a change of use or redevelopment of the site planning permission would be required and it would be the Council's decision at that stage as to whether any proposals were harmful to the Green Belt sufficient to justify a refusal.

6.0 CONCLUSION

This Section 73 application seeks the removal of a planning condition which requires the demolition of the building should the approved change of use to equestrian use cease. A detailed analysis of the subject condition has been provided in terms of development plan policy and government guidelines in respect of Green Belt and the use of planning conditions. It has been demonstrated that essentially the tests set up by the Council go beyond policy.

Furthermore, the condition has been tested against the “six tests” for conditions. It is clear that the subject condition fails these tests and as such there are no justifiable reasons for the imposition or retention of the subject condition.

In the light of all evidence, the Council are invited to grant approval for the removal of the subject condition.