KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) – SECTION 73

DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS TO CARRY OUT DEVELOPMENT WITHOUT COMPLIANCE WITH PLANNING CONDITIONS PREVIOUSLY ATTACHED

Reference No:	**2024/70/91413/E**
Site Address:	Pog Hall Farm, Penistone Road, High Flatts, Huddersfield, HD8 8XU
Description:	Removal of condition 1 (temporary consent) on previous permission 2019/92422 for erection of agricultural building and demolition of existing building
Recommending Officer:	Nicole Helliwell

DECISION – APPROVE REMOVAL OF CONDITION 1

I hereby authorise the approval of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.

Sarah Longbottom

AUTHORISED OFFICER

Date: 11-Jul-2024

Officer Report
Reference No. 2024/70/91413/E
Site Address: Pog Hall Farm, Penistone Road, High Flatts, Huddersfield, HD8 8XU
Proposal: Removal of condition 1 (temporary consent) on previous permission 2019/92422 for erection of agricultural building and demolition of existing building

Site Description
The application relates to an agricultural building which is part of Pog Hall Farm located in High Flatts, Huddersfield. The building is faced in concrete blocks and olive green coloured powder coated steel sheets and incorporates a dual-pitched roof finished in grey corrugated fibre cement sheets. The site is located within the designated Green Belt and the surrounding area is primarily residential. The site is not within a conservation area, nor are there any listed buildings in close proximity. However, the building does sit adjacent to a public right of way (DEN/71/40).

Description of Proposal
The applicant is seeking permission to remove condition 1 of the planning permission granted under 2019/92422. The condition was added to the decision notice to allow the applicant to demonstrate that the agricultural business is viable and is genuinely required in connection with an agricultural enterprise.

Condition 1 of permission 2019/92422 relates to temporary consent and reads as follows:

"1. The permission hereby granted shall expire on 23rd November 2024 (4 years from date of permission). On expiry of this period the agricultural building and all associated development shall be removed and the site shall be restored in accordance with a scheme of work which shall be submitted to the Local Planning Authority not later than six months before the expiry date of this permission. The scheme of works shall not be implemented until the Local Planning Authority has given its written approval. Works comprising the approved scheme shall be completed within six months of the date of the written approval.
Reason: *The building is for a fledgling agricultural business and so a temporary permission is required in order for the applicant to demonstrate, to the local authority's satisfaction, that the agricultural business is viable and the need for the building can be demonstrated. A building of this scale would not normally be considered to be acceptable for a permanent period within the Green Belt, without it being genuinely required in connection with an agricultural enterprise and that the need has been demonstrated. This is in*

accordance with Policy LP54 of the Kirklees Local Plan and government guidance contained within Chapters 5, 6, 12 and 13 of the National Planning Policy Framework."

Relevant Planning History

- **2021/90742:** Discharge condition 6 on previous permission 2019/92422 for erection of agricultural building and demolition of existing building. Planning application details | Kirklees Council – Discharge of Condition(s) Approved
- **2019/92422:** Erection of agricultural building and demolition of existing building. Planning application details | Kirklees Council – Conditional Full Permission
- **2018/91528:** Erection of single storey extension (within a Conservation Area). Planning application details | Kirklees Council – Conditional Full Permission
- **2015/93174:** Works to TPO(s) 07/95 within a Conservation Area. Planning application details | Kirklees Council - Granted
- **2015/91386:** Works to TPO(s) 07/95 within a Conservation Area. Planning application details | Kirklees Council - Granted
- **2015/90423:** Works to TPO(s) 07/95 within a Conservation Area. Planning application details | Kirklees Council - Granted
- **2012/90286:** Erection of greenhouse. Planning application details | Kirklees Council– Refused
- **2009/90833:** Erection of extension (Within a Conservation Area). Planning application details | Kirklees Council – Conditional Full Permission
- **2008/91600:** Erection of extension (within a conservation area). Planning application details | Kirklees Council – Refused
- **2007/92489:** Erection of single and two storey extensions (within a conservation area). Planning application details | Kirklees Council – Withdrawn
- **2003/93221:** Erection of stables. Planning application details | Kirklees Council – Conditional Full Permission
- **97/92778:** Erection of agricultural building. Planning application details | Kirklees Council- Refused
- **97/90850:** Erection of conservatory, porch and double garage extensions. Planning application details | Kirklees Council – Conditional Full Permission
- **95/93210:** Re-use of existing barn and new extensions to form dwelling with integral garage (amended) Planning application details | Kirklees Council – Conditional Full Permission
- **95/90815:** Re-use of existing barns and new extensions to form two dwellings with garages. Planning application details | Kirklees Council – Conditional Full Permission

- **95/90240:** Re-use of existing barns and new extension to form 2 dwellings. Erection of double garage for use with existing farmhouse and double garage for proposed dwellings. Planning application details | Kirklees Council – Withdrawn

Representations
The application was publicised by neighbour notification letters, which expired on 11th July 2024. As a result of the above publicity, no representations have been received.

Consultation Responses
Not Applicable.

Parish/Town Council Comments
Denby Dale Parish Council – No objections

Local Ward Members
Not Applicable.

Policy
Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

The site is located within the designated Green Belt. The most relevant policies for consideration in this case are:

Kirklees Local Plan Policies
- **LP 1** - Achieving Sustainable Development
- **LP 2** - Place Shaping
- **LP 10** – Supporting the Rural Economy
- **LP 21** - Highway Safety and Access
- **LP 22** - Parking
- **LP 24** - Design
- **LP 32** - Landscaping
- **LP 52** - Protection and Improvement of Environmental Quality
- **LP 53** - Contaminated and Unstable Land
- **LP 54** – Buildings for Agriculture and Forestry

National Policies and Guidance:
National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF)

updated 20 December 2023, the Planning Practice Guidance Suite (PPGS) first launched 6th March 2014 together with Circulars, Ministerial Statements and associated technical guidance. The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

- **Chapter 6** - Building a Strong, Competitive Economy
- **Chapter 12** - Achieving Well-Designed Places
- **Chapter 13 -** Protecting Green Belt Land

Assessment

1. Principle of Development

Section 73 of the Town and Country Planning Act 1990 allows for the variation or removal of a condition of a previous permission. The principle of development for the erection of an agricultural building (temporary consent) and the demolition of existing building was established under permission 2019/92422. As such, it is considered that the principle of the development remains established by way of this permission. This assessment will deal with the merits of the proposed variations only

The agricultural building was granted temporary consent in 2020 to enable the applicant to grow the agricultural business and to demonstrate that the business is viable and is genuinely required in connection with an agricultural enterprise. The applicant has now confirmed that there is a need for the building to be permanently retained and are seeking the removal of condition 1 (temporary consent).

In 2019, the applicant stated that they had 10 animals on site. The submitted planning note now confirms that the applicant has 15 animals, with 5 in calf. The planning note also states that the herd is well established and growing with a clear requirement for the building to provide shelter and an area to feed. Furthermore, the applicant's accountant has also prepared a summary which outlines that the main revenue stream is derived from the sale of cows.

In view of the information submitted, it is considered that the agricultural building is genuinely required in association with an agricultural enterprise. Furthermore, it has been demonstrated that the agricultural business is viable and therefore, there is a permanent need for the building.

1. Impact on Visual Amenity

General design considerations are set out in Policy LP24 of the Kirklees Local Plan and Chapter 12 of the NPPF, which seek to secure good design in all developments by ensuring that they respect and enhance the character of the townscape and protect amenity. Policy LP24 of the Kirklees Local Plan states

that ‘the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape.’

This application is to remove condition 1 on the previously approved scheme and would not impact on the visual appearance of the proposal. In view of the above, It is considered that the current submission is acceptable from a visual amenity perspective in accordance with Policies LP24 of the Kirklees Local Plan and the aims of the NPPF.

2. Impact on Residential Amenity

Section B and C of LP24 states that alterations to existing buildings should: “…maintain appropriate distances between buildings’ and ‘…minimise impact on residential amenity of future and neighbouring occupiers”. Further to this, Paragraph 135(f) of the National Planning Policy Framework states that planning decisions should ensure that developments have a high standard of amenity for existing and future users.

The current submission includes no alterations which would alter the previous assessment with respect to residential amenity. On this basis, the scheme is considered to accord with Policy LP24 of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.

3. Impact on Highway Safety

Local Plan Policies LP21 and LP22 of the Kirklees Local Plan are relevant and seek to ensure that proposals do not have a detrimental impact on highway safety and provide sufficient parking. Furthermore, Paragraph 115 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

The current submission includes no alterations which would alter the previous assessment with respect to highway amenity. As such, the impact on highway safety is still considered acceptable and unchanged since the previously issued decision. Therefore, the proposal would comply with Policies LP21 and LP22 of the Kirklees Local Plan, Chapter 9 of the National Planning Policy Framework and advice contained within the Kirklees Highways Design Guide SPD.

4. Other Matters

With regard to other matters that were assessed as part of the previous planning permission (coal mining legacy), the proposal is unchanged in relation to these aspects and any conditions imposed in regard to these

matters to make the development acceptable will be repeated as part of this application.

Conditions Review

As the application is a Section 73 application to vary/remove conditions, it is necessary to re-impose all conditions which remain relevant.

The following conditions relating to the original permission will be re-issued as they are considered to remain relevant:

- 8. External Artificial Lighting

The following conditions relating to the original permission shall be reworded:

- 2. Plans and Specifications Schedule (The plans and specification table will be amended to reflect the documents approved under this application)
- 3. Walling Materials (Reworded to reflect permission)
- 4. Roofing Materials (Reworded to reflect permission)
- 5. Agricultural Use (Reworded to reflect permission)
- 6. Intrusive Site Investigations (Reworded to reflect permission)
- 7. Signed Statement or Declaration (This shall reflect the changes to the NPPF Paragraphs)
- 9. Landscaping Scheme (Reworded to reflect permission)

5. Representations

No representations were received following the statutory publicity.

6. Conclusion

This proposal is a Section 73 Variation of Condition application to remove condition 1 (temporary consent) of planning permission 2019/92422 for the erection of agricultural building and demolition of existing building. In determining a S73, the Local Planning Authority must only consider the 'disputed' condition that is the subject of the application – it is not a complete re-consideration of the application. As detailed within the report, given the acceptable design and lack of harm in terms of visual and residential amenity, the removal is considered to be acceptable.

The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice. This application has been assessed against the relevant policies in the development plan and other material considerations. The proposal would remain in accordance with the development plan and there are no material considerations to indicate otherwise. The development would therefore constitute sustainable development and it is recommended for approval.

Recommendation: Approve

Decision Authorisation – Delegated Powers
Application Number: 2024/91413
Officer Recommendation: Grant Removal of Condition 1
Condition and Reasons

1.The development hereby permitted shall be carried out in complete accordance with the plans and specifications schedule listed in this decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence.
Reason: For the avoidance of doubt as to what is being permitted and to ensure the satisfactory appearance of the development on completion, and to accord Policies LP1, LP2, LP10, LP21, LP22, LP24, LP32, LP52, LP53 and LP54 of the Kirklees Local Plan and the aims of the National Planning Policy Framework.

2. The external walls of the agricultural building hereby approved shall be faced in concrete blocks and olive green coloured powder coated steel sheets. The materials of construction shall thereafter be retained for the lifetime of the development.
Reason: In the interest of visual amenity and to protect the character of the Green Belt in accordance with Policies LP24 and LP54 of the Kirklees Local Plan and the aims of the National Planning Policy Framework.

3. The external roofing materials of the agricultural building hereby approved shall be finished in cement fibre sheets (grey colour). The materials of construction shall thereafter be retained for the lifetime of the development.
Reason: In the interest of visual amenity and to protect the character of the Green Belt in accordance with Policies LP24 and LP54 of the Kirklees Local Plan and the aims of the National Planning Policy Framework.

4. The building hereby approved shall be for agricultural use only as defined by section 336 of the Town and Country Planning Act 1990 and thereafter retained. **Reason:** In order to retain the building in agricultural use, in the interests of the rural economy and the viability of the farm and to protect the openness of the Green Belt in accordance with Policy LP54 of the Kirklees Local Plan and the aims of the National Planning Policy Framework.

5. The development shall be completed in accordance with the Letter by Haigh Huddlestone & Associates (E20/7724/MD/L002, dated 12th February 2021) approved under app no. 2021/90742 and retained thereafter.
Reason: This condition is necessary to ensure the safe occupation of the site in accordance with Policy LP53 of the Kirklees Local Plan and Paragraph nos. 189 and 190 of the National Planning Policy Framework.

6. Prior to the development being first brought into use, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.
Reason: This is in order to ensure the safety and stability of the development, in accordance with policy LP53 of the Kirklees Local Plan and Paragraphs 189 and 190 of the National Planning Policy Framework.

7. Before the installation of any external artificial lighting commences a lighting scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme should include the following information:-

a) The proposed hours of operation of the lighting
a) The location and specification of all of the luminaires
b) The proposed design level of maintained average horizontal illuminance for the areas that needs to be illuminated.
c) The predicted vertical illuminance that will be caused by the proposed lighting when measured at windows of any properties in the vicinity.
d) The measures that will be taken to minimise or eliminate glare and stray light arising from the use of the lighting that is caused beyond the boundary of the site

e) The methods of switching and controlling the lighting so that it is only operated at the permitted times and at times when it is required.

The external artificial lighting shall be installed and operated thereafter in accordance with the approved scheme.

Reason: In order to control impact of light pollution on nearby residential properties and the openness and character of the Green Belt. In accordance with policies LP24 and LP52 of the Kirklees Local Plan.

8. The development shall be completed in accordance with the landscaping scheme shown in figure 7 of the Landscape and Visual Appraisal document (P20-1084, dated June 2020) approved under app no. 2019/92422 and retained thereafter.

Reason: In the interest of visual amenity and the openness and character of the Green Belt. In accordance with Policies LP24, LP32 and LP54 of the Kirklees Local Plan and the aims of the National Planning Policy Framework.

NOTE: The proposed design levels of illuminance should be shown to be appropriate for the intended use by reference to appropriate guidance. Generally, to minimise problems of glare and stray light from external artificial lighting it should be installed and maintained in accordance with the "Guidance Notes for the Reduction of Obtrusive Light" by the Institution of Lighting Professionals: 2011 www.theilp.org.uk. The predicted levels of stray light must not exceed the recommended maximum levels given in Table 2 of this guidance for an Environmental Zone.

NOTE: Kirklees Council has powers under Section 60 of the Control of Pollution Act 1974 to control noise from construction sites and may serve a notice imposing requirements on the way in which construction works are to be carried out. It has additional powers under Sections 80 of the Environmental Protection Act 1990 to prevent statutory nuisance including noise, dust, smoke and artificial light and must serve an abatement notice when it is satisfied that a statutory nuisance exists or is likely to occur or recur. Failure to comply with a notice served using the above-mentioned legislation would be an offence for which the maximum fine on summary conviction is unlimited.

NOTE: The granting of planning permission does not override any private legal rights or consents that may be required. It is the responsibility of the applicant / developer to ensure that all appropriate consents are in place prior to any development commencing; during the period of construction existing access for neighbouring properties is maintained; and no damage is caused to the access driveway or surrounding properties.

NOTE: To minimise noise disturbance at nearby premises it is generally recommended that activities relating to the erection, construction, alteration, repair or maintenance of buildings, structures or roads shall not take place outside the hours of:

- 07.30 and 18.30 hours, Mondays to Fridays
- 08.00 and 13.00hours, Saturdays
- With no working Sundays or Public Holidays

In some cases, different site-specific hours of operation may be appropriate. Under the Control of Pollution Act 1974, Section 60 Kirklees Environment and Transportation Services can control noise from construction sites by serving a notice. This notice can specify the hours during which the works may be carried out.

Plans and Specifications Table:

Plan Type	**Reference**	**Revision**	**Date Received**
Plans and details pursuant to 2019/92422			
Location Plan	0001	P1	22/07/2019
Existing Site Plan	0005	P1	22/07/2019
Proposed Site Plan	0002	P2	18/06/2020
Proposed Plans and Elevations	0003	P3	18/06/2020
Design & Access Statement	SWCB-MWA-XX-XX-RP-A-0001	-	22/07/2019
Letter from land agent dated 18.9.2019	-	-	19/09/2019
Plan of additional land – Cumberworth Lane	0006	P1	05/11/2019
Plan of additional land – Denby Lane	0007	P1	05/11/2019
Notes to accompany the application from the agent	-	-	21/01/2020
Coal Mining risk assessment: (Haigh Huddleston & Associates, 10 July 2020)	E17/7724/MD/L001	-	13/07/2020
Landscape and visual appraisal by Pegasus Group dated June 2020	P20-1084	-	18/06/2020
Supplementary Information : Feed Requirement Details	-	-	18/06/2020
Plans and details pursuant to 2021/90742			
Letter by Haigh Huddlestone & Associates	E20/7724/MD/L002	-	23/02/2021
Plans and details pursuant to 2024/91413			

Plan Type	Reference	Revision	Date Received
Planning Note	-	-	17/05/2024
Finance Note	-	-	17/05/2024

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Authority has, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. In this case, the design of the original scheme has been found acceptable. No further amendments or details were sought thereafter.

Report Date: 09/07/2024