

REPORT FOR DECISION

DECISION OF:	PLANNING CONTROL COMMITTEE
DATE:	25 July 2017
SUBJECT:	PLANNING APPEALS
REPORT FROM:	HEAD OF DEVELOPMENT MANAGEMENT
CONTACT OFFICER:	DAVID MARNO
TYPE OF DECISION:	COUNCIL
FREEDOM OF INFORMATION/STATUS:	This paper is within the public domain
SUMMARY:	<p>Planning Appeals:</p> <ul style="list-style-type: none"> - Lodged - Determined - Local Government Ombudsman final decision <p>Enforcement Appeals</p> <ul style="list-style-type: none"> - Lodged - Determined
OPTIONS & RECOMMENDED OPTION	The Committee is recommended to the note the report and appendices
IMPLICATIONS:	
Corporate Aims/Policy Framework:	Do the proposals accord with the Policy Framework? Yes
Statement by the S151 Officer: Financial Implications and Risk Considerations:	Executive Director of Resources to advise regarding risk management
Statement by Executive Director of Resources:	N/A
Equality/Diversity implications:	No
Considered by Monitoring Officer:	N/A

Wards Affected:	All listed
Scrutiny Interest:	N/A

TRACKING/PROCESS

DIRECTOR:

Chief Executive/ Strategic Leadership Team	Executive Member/Chair	Ward Members	Partners
Scrutiny Committee	Committee	Council	

1.0 BACKGROUND

This is a monthly report to the Committee of the Planning Appeals lodged against decisions of the authority and against Enforcement Notices served and those that have been subsequently determined by the Planning Inspectorate.

Attached to the report are the Inspectors Decisions and a verbal report will be presented to the Committee on the implications of the decisions on the Appeals that were upheld.

2.0 CONCLUSION

That the item be noted.

List of Background Papers:-

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Appeal Decision

Site visit made on 26 June 2017

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7th July 2017

Appeal Ref: APP/T4210/W/17/3172551

Twine Valley Farm, Church Road, Shuttleworth BLO 0EH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr James Brown (SR and JR Brown Ltd) against the decision of Bury Metropolitan Borough Council.
 - The application Ref 60962, dated 15 December 2016, was refused by notice dated 1 March 2017.
 - The development proposed is an agricultural building for silage.
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Decision

1. The appeal is allowed and planning permission is granted for an agricultural building for silage at Twine Valley Farm, Church Road, Shuttleworth BLO 0EH in accordance with the terms of the application, Ref 60962, dated 15 December 2016, subject to the following conditions set out in Annex A.

Background and Main Issues

2. The appeal site is located in the Green Belt, so I take as my starting point the relevant policy context set out in the development plan and the *National Planning Policy Framework* (the Framework). Having regard to paragraph 89 of the Framework, and to Policy OL1/2 of the *Bury Unitary Development Plan (adopted August 1997)* (BUDP), as an agricultural building, it is agreed by both main parties that the proposal would not be inappropriate development in the Green Belt, and I agree.
3. In the light of this conclusion, and having regard to the Court of Appeal judgement¹, as the effect of development on openness and the purposes of including land within the Green Belt are not expressly stated as determinative factors in gauging inappropriateness for proposals that fall under the first bullet point of paragraph 89 of the Framework, there is no requirement for me to separately assess the impact of the development on the openness of the Green Belt, or the purposes of including land within it.
4. Accordingly, the main issues in the appeal are the effect of the proposed development on:
 - the character and appearance of the surrounding Special Landscape Area;
 - the living conditions of nearby residents with particular regard to odour;

¹ Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404

- ground water contamination; and
- highway safety.

Reasons

Character and Appearance

5. The appeal site is located in a field on a steeply sloping hillside. A modern agricultural building lies to the west of the site, and to the south, at a lower level, are a number of other agricultural buildings. The wider area, which is designated a Special Landscape Area, consists of steep hills scattered with farmsteads with some small areas of housing.
6. The proposed building would be a large structure, constructed from concrete block work and Yorkshire boarding, and a corrugated sheet roof. The only opening would be on the eastern elevation, facing the other barn at this level, and so blank elevations would be presented to both the road to the south, and the footpath to the north. In addition an area of hardstanding would be created between the proposed and the existing barn as well as an access track down to the lower level barns.
7. The scale, mass and bulk of the proposed building, together with its elevated position on the hillside mean it would be a significant feature in the local landscape. However, despite its siting, I observed that in most views from the surrounding roads and footpaths it would be seen in the context of at least one, if not all, the other large agricultural buildings that form part of the farmstead. As a result it would not be seen as an isolated stand-alone building, nor would it appear as an incongruous feature in the landscape.
8. Moreover, the majority of houses in the immediate vicinity do not directly face the site, and from many of those that do, such as along Church Road, the topography and intervening vegetation would largely screen the building from view. It would be visible from the limited number of houses that face onto Bamford Road, but from these it would be seen in the context of all the other farm buildings.
9. Although the proposed and the existing buildings cannot be described as attractive, they are typical of a farmstead, and what one might expect to find in open countryside and / or in the Green Belt. As such, the proposal would not detract from the rural character of the area.
10. Therefore, I am satisfied that the proposal would not have an unacceptable detrimental impact on the character and appearance of the surrounding Special Landscape Area. As a result there would be no conflict with Policies EN1/1, EN9/1 or OL4/5 of the BUDP which seek to ensure that developments have a high standard of design, do not have a detrimental impact on visual amenity and relate well to existing buildings.

Living Conditions

11. The proposed building, which would be a limited distance to the nearby houses, particularly those on Church Road and Millhouse Street, would be used to store silage. I understand that when produced the silage is wrapped in air-tight plastic bales until it is used. Whilst no odour assessment has been submitted with the application, I observed during my site visit that a significant number of

bales of silage were being stored on open land adjacent to Turn Road, and there was no particular odour created in the immediate vicinity of these bales. Nor have I been made aware of any complaints regarding odour from these bales from the residents of the nearby houses on Bury Old Road.

12. The proposed building is largely enclosed, with the main opening being on the elevation furthest from the houses, which would help to reduce the dispersion of any odour. In addition, I am conscious that the open storage of bales could take place on the site, or on the land around the lower agricultural buildings, without the need for planning permission.
13. Given this, I am not persuaded that the proposed development would have an adverse impact on the living conditions of nearby residents with particular regard to odour. Therefore it would not be contrary to Policy EN7/1 of the BUDP which seeks to control development that would have an unacceptable impact on the levels of atmospheric pollution.

Groundwater Contamination

14. The application was not accompanied by any information regarding how the development would address potential ground water contamination. Whilst in this respect this would mean that the proposal would not accord with Policies EN7/4 and EN7/5 of the BUDP, I consider that a suitably worded condition would be sufficient to deal with these concerns. My approach in this regard is supported by the findings of the Inspector dealing with a different appeal on the site², and also the Councils approach in determining an application for the alteration and extension of one of the existing buildings on the site in 2012³. Consequently, I consider that this matter does not constitute a reason for refusing the appeal scheme.

Highway Safety

15. The appellant has indicated that the building would be used for the storage of silage produced on the farm, and used to feed the cows which are over-wintered in barns on the holding. The proposed new access between the proposed barn and the cattle sheds would ensure that the majority of traffic movements associated with the proposed building would be contained within the farm holding, and would have no impact on the surrounding road network. Moreover, as at present the silage produced on this holding is taken to the appellant's other farm holding to be stored, and brought back when required, the proposal may even reduce traffic movements on the highway network.
16. Therefore, I am not persuaded that the proposal would result in a significant increase in traffic movements on the highway network. As such, I do not consider it would be detrimental to highway safety. Accordingly there would be no conflict with Policies HT2/4 or EN1/2 of the BUDP which require developments to make adequate servicing and parking provision.

Other matters

17. I note the comments regarding whether the building given permission in 2012 was fully completed, whether the barn located adjacent to the appeal site has been built according to the plans, whether the access to this barn from Turn

² Appeal Reference APP/T4210/W/16/3151468

³ Application Reference 54594

Road is lawful, and that the appellant is converting other barns to dwellings without planning permission. However, none of these are matters that are before me at this appeal.

18. A number of third parties have questioned the need for the building, and in particular a building of this size. However, the requirement in The Town and Country Planning (General Permitted Development) Order 2015 (Part 6, Classes A and B - 'Agricultural and Forestry') that buildings and other works must be "*reasonably necessary for the purposes of agriculture within that unit*" relates solely to the consideration of whether a proposal would be permitted development. Thus the need for the building is also not a matter before me in this appeal.
19. It has been suggested that the proposal would result in a loss of light, privacy and outlook to nearby houses. However, given the distance that would be maintained to these houses, whilst the view from some windows may change, the proposal would not have an unacceptable impact on the outlook, light or privacy of the occupiers of nearby houses. In addition, any noise disturbance from vehicles reversing would be short-lived.

Conclusion and Conditions

20. For the reasons set out above, I conclude the appeal should be allowed.
21. The Council has not suggested any conditions. However, to provide certainty the standard implementation condition is required, as is a condition requiring that the development is carried out in accordance with the approved plans. In the interests of the character and appearance of the area conditions are required to control the external appearance of the building, and the landscaping of the site. To ensure the satisfactory drainage of the site it is necessary to control details of the disposal of foul and surface water.

Alison Partington

INSPECTOR

Annex A

Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; Plan of Land Holding at Twine Valley Farm; Existing Site Plan Drawing No xxx; Proposed Site Plan Drawing No xxx; and Building Details and Section Drawing No xxx.
- 3) No development shall commence until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved samples.
- 4) No development shall commence until a landscaping scheme, including an implementation programme, has been submitted to, and approved in writing by, the local planning authority. The scheme shall include: boundary treatments; planting plans; written specifications (including soil depths, cultivation and other operations associated with plant and grass establishment); and schedules of plants noting species, planting sizes and proposed numbers/densities.

The landscaping works shall be carried out in accordance with the approved details, and with the agreed implementation programme. The completed soft landscaping scheme shall be maintained for a period of 5 years from the date of planting. During this period any trees or shrubs which die, or are damaged, removed, or seriously diseased shall be replaced by trees or shrubs of a similar size and species to those originally planted.

- 5) No development shall commence unless or until, details of the foul and surface water drainage and any storage tank for slurry, if appropriate, has been submitted to, and approved in writing by, the local planning authority. The approved details shall be implemented in full prior to the building hereby approved being first brought into use, and thereafter made available for use.

Complaint reference:
16 017 665

Complaint against:
Bury Metropolitan Borough Council

The Ombudsman's final decision

Summary: There is no evidence that the Council failed to consider the impact of Dr and Mrs B's amenity when it approved a neighbour's planning application. It made the decision after completing a site visit and considering relevant policies. It should have explained its reasons more thoroughly in the delegated report but this did not cause enough significant injustice to warrant a recommendation by the Ombudsman.

The complaint

1. The complainants, Dr and Mrs B complain that the Council failed to properly consider the impact of a neighbour's residential development on their amenity.

The Ombudsman's role and powers

2. We investigate complaints of injustice caused by maladministration and service failure. I have used the word fault to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
3. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

4. I have:
 - Read the papers submitted by Dr and Mrs B and discussed the complaint with Mrs B.
 - Considered the Council's comments about the complaint and the supporting documents it provided.
 - Shared my draft decision with Dr and Mrs B and the Council and considered their comments.

What I found

Law and guidance

5. A right to light may be acquired by anyone who has had uninterrupted use of something over someone else's land for 20 years without consent, openly and without threat and without interruption for more than one year. Right to light is a

civil matter and is different to the impact on residential amenity considered by local planning authorities.

6. The Council has supplementary guidance on residential development which must be taken into account when deciding planning applications. It states:

“Where the proposed extension would be on or immediately adjacent to the boundary of an attached property, it should not normally project in excess of 3m beyond the rear elevation of that property;

- *extensions projecting in excess of 3m will be as assessed against a 45° line from the neighbouring habitable room window as set out in appendix 1.*
- *extensions which encroach on the 45° line will not normally be permitted unless it can be demonstrated that the amenity of the neighbours would not be seriously and detrimentally affected by the loss of daylight and sunlight into house and garden space.”*

Events leading to the complaint

Planning permission granted

7. In October 2015 Dr and Mrs B’s neighbour applied for an extension up to the boundary of their semi-detached property which also has a single story extension up to this boundary. Dr and Mrs B’s extension houses a living room. It has a small secondary window on the boundary facing wall and a glazed door and window facing the garden.
8. The Council notified Dr and Mrs B of the application and they asked the Council to confirm whether the extension would be for residential or business use because of previous issues. The Council confirmed it was for residential use.
9. The Council completed a site visit in December and then wrote to the neighbour about their extension. It said that the extension to the rear was too large as were the dormer and side extension and asked for a revised application.
10. The neighbour sent the Council a revised application in January 2016 and the Council notified Dr and Mrs B. Mrs B phoned the Council said she had been told that the property would be used for business purposes. The Council did not receive any further comments.
11. The case officer’s delegated report said *“there would not be any detrimental effect on residential amenity”* on Dr and Mrs B’s property. It then granted permission under delegated authority.

Dr and Mrs B complain to the Council

12. Dr and Mrs B’s neighbour started work on the extension in 2017 and they became concerned about the impact of the development in their living room. They said one of the walls was built up to their boundary and would completely block their light. They told the Council that a solicitor had told them about their ‘right to light’.
13. In response the Council visited the site and said that there were no enforcement issues. It told Dr and Mrs B that when it granted planning permission it did consider the impact of the development on the habitable room. But did not consider that there was any sound planning reason to refuse the application and that it complied with its supplementary guidance. It advised them to notify the Council if it became concerned that the development was not being built in accordance with approved plans.
14. Dr and Mrs B remained dissatisfied with the Council’s response and believe that the impact on their amenity was significant enough to warrant refusal. They also

complained that, before the application was approved, Mrs B asked to see the plans and the Council told her they were online. But she could not access them because she did not have access to the internet. They also complained that now they have had sight of the plans they think that the plans are unclear because it is difficult to assess how high the wall is going to be and whether it would obstruct their habitable room window.

15. The Council responded to Dr and Mrs B's concerns under stage two of its complaints policy because of the level of correspondence with the planning team beforehand.
16. The Council said that the window that has been blocked up is a small secondary window with obscured glazing therefore protection through planning considerations is minimal. It said the single story element of the development which Dr and Mrs B are unhappy with could have been built under permitted development legislation without the need for planning permission. The Council maintained its view that the extension is acceptable in planning terms and the right to light test is a private law matter and directed them to approach the Ombudsman.
17. Dr and Mrs B approached the Ombudsman because they remained dissatisfied with the Council's response. They accepted that the window that has been blocked up is a secondary window, but said even the primary window breaches the 45 degree rule. Therefore the impact on amenity is not acceptable. They are state the secondary window is not obscured, it is patterned.

Analysis

18. The Council was correct when it told Dr and Mrs B that the 'right to light' test is a private law matter. It is not a material planning consideration. Although the impact of a development on light is a material planning consideration; it does not follow the same test.
19. In this case, when the Council granted permission via delegated authority it said "*there would not be any detrimental effect on residential amenity*". But this is not the case. The development does have some detrimental impact on Dr and Mrs B's amenity and the Council should have explained in the report why this impact is not significant enough to warrant refusal of planning permission. The Council has since provided a suitable explanation throughout its complaints procedure and to the Ombudsman's investigation that it has appropriately considered Dr and Mrs B's amenity. Therefore I am satisfied that Dr and Mrs B's amenity has been considered when it granted planning permission, but this should have been explained and evidenced in the delegated report.
20. Failure to do this is fault. But it has not caused Dr and Mrs B significant enough injustice to warrant any action by the Ombudsman. Because had the fault not occurred, it is more likely than not, the Council would have still granted planning permission.
21. Dr and Mrs B state that the development breaches the 45 degree rule. But the Council's supplementary planning guidance states that the development only needs meet this rule when the extension exceeds three metres. Although the Council should still use its professional judgement and discretion to refuse applications where it deems that the impact on amenity is unacceptable but adheres to this policy. In this case, the Council has decided that the impact on Dr and Mrs B's amenity is acceptable in planning terms. It made this decision after a

site visit and considering relevant policies. Therefore the Ombudsman will not challenge the merits of this decision.

22. With regards to Dr and Mrs B not being able to access the plans online, I have not seen any evidence of them asking for this reasonable adjustment prior to the Council granting planning permission. It is not normal practice for council's to post plans to neighbours and therefore I would not expect the Council to consider this without being asked. It is also for members of the public to seek their own independent advice if they are unclear about the content of any plans.

Final decision

23. There is no evidence that the Council failed to consider the impact of Dr and Mrs B's amenity when it approved a neighbour's planning application. It made the decision after completing a site visit and considering relevant policies. It should have explained its reasons more thoroughly in the delegated report but this did not cause enough significant injustice to warrant a recommendation by the Ombudsman. Therefore I have completed my investigation.

Investigator's decision on behalf of the Ombudsman