

REPORT FOR NOTING

DECISION OF:	PLANNING CONTROL COMMITTEE
DATE:	26 March 2019
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 <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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**Planning Appeals Lodged
between 11/02/2019 and 17/03/2019**



Application No.: 63156/FUL

Appeal lodged: 12/03/2019

Decision level: DEL

Appeal Type:

Recommended Decision: Refuse

Applicant: The Great Northern Property Company Limited

Location 19 Cobden Street, Radcliffe, Manchester, M26 4HR

Proposal Conversion of existing community centre/club to form 2 no. dwellings; New pitched roof and alterations to fenestration

Application No.: 63358/ADV

Appeal lodged: 27/02/2019

Decision level: DEL

Appeal Type: Written Representations

Recommended Decision: Refuse

Applicant: Mala Cuisine Ltd

Location 18-20 Holcombe Village, Ramsbottom, Bury, BL8 4LZ

Proposal 1 No. internally illuminated fascia sign and 1 no. internally illuminated projecting sign

Total Number of Appeals Lodged: 2

**Planning Appeals Decided
between 11/02/2019 and 17/03/2019**



Application No.: 62473/FUL	Appeal Decision: Part allowed
Decision level: COM	Date: 04/03/2019
Recommended Decision: Split Decision	Appeal type: Written Representations
Applicant: Mr Richard Ali	
Location: Bramley Fold Farm, Hawkshaw Lane, Tottington, Bury, BL8 4LG	
Proposal: Proposal A: Alterations to existing shed Proposal B: Two storey extension at rear and two storey extension at side	
Application No.: 62677/AG	Appeal Decision: Allowed
Decision level: DEL	Date: 07/03/2019
Recommended Decision: Prior Approval Required	Appeal type: Written Representations
Applicant: Mr J Brown	
Location: Twine Valley Farm, Church Road, Shuttleworth, Ramsbottom, Bury, BL0 0EH	
Proposal: Prior notification of proposed agricultural building for the storage of silage	
Application No.: 62837/FUL	Appeal Decision: Dismissed
Decision level: DEL	Date: 11/02/2019
Recommended Decision: Refuse	Appeal type: Written Representations
Applicant: Fenster Trade Frames	
Location: Units 1-3 Goodlad Street, Bury, BL8 1SX	
Proposal: Erection of 2.4 metres high palisade fencing and gate	

Appeal Decision

Site visit made on 21 January 2019

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2019

Appeal Ref: APP/T4210/D/18/3211132

Bramley Fold Farm, Hawkshaw Lane, Tottington BL8 4LG

- 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 Richard Ali against the decision of Bury Metropolitan Borough Council.
 - The application Ref 62473, dated 19 February 2018, was refused by notice dated 20 June 2018.
 - The development proposed is the erection of a replacement shed following demolition of existing, and extensions to existing dwelling.
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Decision

1. The appeal is dismissed insofar as it relates to extensions to existing dwelling. The appeal is allowed and planning permission is granted for the erection of a replacement shed following demolition of existing at Bramley Fold Farm, Hawkshaw Lane, Tottington BL8 4LG in accordance with the terms of the application, Ref 62473, dated 19 February 2018, and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 17/465.08B and the planning application location plan App. No 62473.

Application for costs

2. An application for costs was made by Mr Richard Ali against Bury Metropolitan Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. This appeal is against a split decision by the Council. Section 79 (1) (b) of the Town and Country Planning Act 1990 (the Act) allows that, on appeal under section 78 of the Act, the Secretary of State may 'reverse or vary any part of the decision of the local planning authority (whether the appeal relates to that part of it or not), and may deal with the application as if it had been made to him in the first instance'.
4. The proposed development comprised two distinct elements, referred to as Proposal A and Proposal B by the Council on its decision notice. Proposal A was for the erection of a replacement shed following demolition of an existing shed and Proposal B was for extensions to the existing dwelling. Notwithstanding

that the appeal before me was made against the refusal of Proposal B, I have also considered Proposal A in my decision.

5. The description of the proposed development on the application form is inaccurate, in that it does not refer to the replacement of an existing shed with a new shed and refers to internal alterations that do not require planning permission. I have therefore amended the description accordingly above.

Main Issues

6. The main issues are:

- whether the proposals are inappropriate development in the Green Belt having regard to the National Planning Policy Framework 2019 (the Framework) and local planning policy
- the effect of the proposals on the openness of the Green Belt
- whether the proposed development would preserve or enhance the character or appearance of a non-designated heritage asset (NDHA)
- if the proposals are inappropriate development whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate Development in the Green Belt

7. Policy OL1/2 (new buildings in the Green Belt) of the Bury Unitary Development Plan 1997 (BUDP) outlines circumstances in which the construction of new buildings in the Green Belt can be considered acceptable. Policy OL1/2 predates the Framework, and whilst generally consistent, differs in certain respects relevant to this appeal, and so I have given it limited weight in my decision. Supplementary Planning Document 8 - New buildings and associated development in the Green Belt 2007 (SPD8) provides guidance to the application of BUDP policies, including Policy OL1/2. SPD8 also predates the Framework and is inconsistent with it, including in terms of specifying an indicative acceptable size for an extension relative to the original building. I have therefore given SPD8 only very limited weight.
8. The Framework states that new buildings are inappropriate within the Green Belt unless they comprise one of the exceptions outlined in paragraph 145. These include:
- c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building¹
 - d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces

I have given significant weight to the Framework as a material consideration in determining this appeal.

¹ The Framework Glossary defines an original building as *A building as it existed on 1 July 1948*

9. The replacement shed would be located some distance to the south west of the main building at Bramley Fold Farm, on a narrow track that is signposted as a public footpath, and which provides access to a nearby dwelling - 'Melrose'. To the south of the proposed shed is a small housing estate within Hawkshaw. The existing timber shed would be replaced with a new timber shed with a corrugated metal roof. The submitted drawings show that the replacement shed would be constructed on the same footprint, to the same height and to a similar design as existing. It would not, therefore, be materially larger than the existing shed.
10. For the reasons given above, the replacement shed would not be inappropriate development in the Green Belt and would therefore accord with Policy OL1/2 of the BUDP and with the Framework in this regard.
11. The other part of the proposed development would be two 2-storey extensions to the main building at Bramley Fold Farm. The existing main building is 2-storeys in height and has a generally rectangular shape, with a pitched roof. A 1947 map provided by the appellant shows that the main building included an additional element at the northwest corner. Given the date of this map it is likely that this therefore formed part of the 'original building'. However, this element has been demolished, the map is not at a measurable scale and no information has been provided regarding the design or volume of this element.
12. The roof slope to the north of the building extends to immediately above ground floor level and is described as a 'Catslide' roof. There are two single storey outriggers projecting from the main northern elevation of the building, one of which includes a substantial chimney stack, which rises close to the height of the roof's ridge. A large freestanding storage tank is also located to the north of the main building. There are hedgerows and a low wall and fence around the boundaries of the appeal site, and the land to the north of the main building within the site has a gentle upward slope. There is a small porch on the southern (front) elevation of the building, which provides the main access to the property.
13. At the eastern end of the building and attached to it, there is a 2-storey structure on a generally square-shaped footprint. The structure is integral to the main building but is set back from the front elevation a short distance. It has a lower ridge height to its pitched roof, the northern slope of which follows the 'Catslide' form of the roof of the main building.
14. One extension would be a 2-storey structure attached to the western end of the main building, on currently vacant land, but land which was partly occupied by a built structure in 1947. It would be set back a short distance from the front and rear elevations, with a slightly lower ridge height than the ridge of the main building. To the rear of this proposed extension would be a gable roof, level with and projecting from the proposed extension's ridgeline.
15. The other extension would be to the northern (rear) elevation of the main building. It would project a similar distance to the north as the existing outriggers but would be 2-storeys in height and span a width of around half of the main building. There would be three gables projecting to the rear, with ridge heights slightly below the height of the ridge on the main building. A flat roofed, single storey, open-sided log store / oil tank store would also be constructed at the western end of the proposed extension.

16. As I have limited information regarding the now demolished element of the building as described above, it is not possible to definitively assess the impact of the proposed extensions on the original building. However, in terms of volume calculations, both main parties have used the existing building as a proxy for the original building. Given the uncertainty regarding the now demolished element of the building, this is a reasonable approach. On that basis, it is also reasonable to assess the visual impact of the proposed extensions in relation to the existing building.
17. The proposed extensions would increase the volume of the existing building by some 38%. Furthermore, the 2-storey gables on the northern parts of both extensions would significantly change the appearance of the gable and rear elevations of the main building, projecting well beyond the distinctive *Catslide* roof. Both extensions would be disproportionate additions to the existing building by reason of their size, design, massing and position.
18. For these reasons the proposed extensions would be inappropriate development in the Green Belt and would conflict with Policy OL1/2 of the BUDP and with the Framework, in this regard.

Openness of the Green Belt

19. As set out above, the replacement of the existing shed is not inappropriate development in the Green Belt such that further consideration of its impact in terms of the openness of the Green Belt is not needed.
20. The Framework states that openness is an essential characteristic of the Green Belt. Bramley Fold Farm is located a short distance to the north of Hawkshaw and comprises a 2-storey pitched roof building, with three single-storey out-buildings located a short distance to the northwest. Surrounding much of the appeal site are small fields which have a generally open appearance.
21. As referred to above, the proposed development would increase the volume of the main building by some 38%. It would also extend the existing building footprint by some 23%, to the west and the north. This would therefore decrease the openness of the Green Belt compared to the existing situation.
22. Furthermore, the proposed western extension would be visible from the south, including from Hawkshaw Lane and the footpath by the site of the proposed replacement shed. The size, design, massing and position of the proposed northern extensions mean that they would also be visible from the north and east along Hawkshaw Lane. Notwithstanding the topography of the appeal site and the hedgerows around its boundaries and along Hawkshaw Lane, the proposed extensions would have a negative visual impact in terms of openness.
23. For these reasons, the proposed extensions would reduce the openness of the Green Belt in comparison to the existing building and would therefore conflict with the Framework in this regard.

Character and appearance of a non-designated heritage asset

24. Planning Practice Guidance (PPG) states *that local planning authorities may identify non-designated heritage assets*. Bramley Fold Farm has been identified on the Council's draft list of NDHAs, although the Council has confirmed that this list has not been consulted upon and has not been formally adopted. However, with reference to PPG and the Framework, it is not

necessary for a building to be on an adopted local list or consulted upon, in order to be identified as an NDHA.

25. The local list record for Bramley Fold Farm, produced by the Council, does not contain much information as to the *significance*² of the NDHA. The appellant refers to the history of the building and the numerous alterations that have been made to it over time to suit the needs of different occupiers. However, the Council's officer report states that the shape of the existing building, with 'a long, lowish profile and catslide roof to the rear' is an important feature in terms of its character and significance, and from the information before me I have found no reason to disagree.
26. The appellant does not consider that the Council assessed the significance of the Bramley Fold Farm in accordance with the Framework³, and refers to a High Court Judgement in this regard⁴. I have had regard to paragraph 197 of the Framework, which states that the *effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.*
27. As set out above, the 2-storey gables on the northern parts of both extensions would project well beyond the distinctive *Catslide* roof and would significantly alter the appearance of the side and rear elevations of the main building. In my view, the size, design, position and massing of the proposed extensions would cause substantial harm to these features, which have been identified as being of architectural significance to the NDHA in the Council's officer report, and with which I broadly agree.
28. For these reasons the proposed extensions would be harmful to the character and appearance of this NDHA and would therefore conflict with the Framework in this regard.

Other considerations

29. The appellant states that the proposed extensions, and associated internal alterations, are needed to allow three generations of the family to live together, with sufficient space and privacy to meet their current and future needs. Two family members are said to work from home and it is envisaged that a family member will also attend the village school. Furthermore, the appellant states that two members of the family have 'serious health issues'. The Design and Access Statement refers to a family member suffering from a critical illness, and that the western extension would be used as live/work space for a person 'classified as disabled'. The proposed development would enable family members to provide mutual support to each other and 'provide single level living for the less mobile members of the family'.
30. In exercising my function on behalf of a public authority I have had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act

² As set out in the Framework's Glossary

³ Reference is made to paragraph 135 and to the definition of Significance in Annex 2 of the Framework 2012. These two elements are substantially the same in the Framework 2019, at paragraph 197 and the Glossary.

⁴ Case No: CO/3971/2014

2010. I have also had due regard to the evidence regarding the appellant's family circumstances referred to above and I have given this moderate weight.
31. The appellant states that the building is currently thermally inefficient, and that this would be addressed by the proposed package of works. Reference is also made to existing solar panels at the property and to the examination of other renewable energy measures in the future. However, no substantive details of how the proposed development would improve the environmental performance of the building have been provided and I have given this only limited weight.
32. The appellant refers to other properties in the local area that have been significantly extended, with the consent of the Council⁵. I am not familiar with the details or circumstances of these proposals, and in any event, I have considered this appeal on its individual merits. I therefore give this very limited weight.
33. The appellant makes a number of comments concerning the identification of the main building at Bramley Fold Farm as an NDHA, the process of identification and the information that they have been required to provide as a result to support their application. The appellant also refers to the design of the proposal and the limited visibility of the proposed extensions. The appellant also notes that Bramley Fold Farm has been altered over time to suit the needs of its occupiers and that the appeal development would be smaller than the one originally proposed. The appellant also notes that no objections to the proposed extensions have been made by neighbouring occupiers.
34. However, as set out above, Bramley Fold Farm has been identified as an NDHA by the Council in accordance with the Framework and PPG. I have also determined that the proposed extensions would harm its character and appearance and would be visible from public land. I note the absence of objections from nearby occupiers to the proposal. However, this does not cause me to reach a different conclusion in relation to the harm that the proposal would cause to the character and appearance of an NDHA, as set out above. I therefore give these matters very limited weight.
35. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I find that the other considerations in this case, as set out above, do not clearly outweigh the totality of the harm to the Green Belt that I have identified, bearing in mind the great importance the Government attaches to the Green Belt. Consequently, the very special circumstances necessary to justify the proposed extensions do not exist. The proposed extensions would therefore conflict with Policy OL1/2 of the BUDP and with the Framework, in this regard.

Conditions and Conclusion

36. With respect to the replacement shed, in addition to the standard commencement condition, a condition specifying the approved plans would be necessary for reasons of certainty.

⁵ 'Melrose'; Tonge Fold Farm; No 17 Bolton Road; and, No 31 Quarlton Drive.

37. For the reasons set out above, I conclude that the appeal should be dismissed insofar as it relates to the proposed extensions, but allowed insofar as it relates to the replacement shed.

Andrew Parkin

INSPECTOR

Costs Decision

Site visit made on 21 January 2019

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2019

Costs application in relation to Appeal Ref: APP/T4210/D/18/3211132 Bramley Fold Farm, Hawkshaw Lane, Tottington BL8 4LG

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Richard Ali for a full award of costs against Bury Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for extensions to existing dwelling.
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Decision

1. The application for an award of costs is refused.

Preliminary Matters

2. On the associated appeal decision I amended the description of the development to improve its accuracy and I have used the same description in the heading above.
3. The application for costs refers to three supporting documents: 'Complaint 1'; 'Complaint 2' and 'G.Little (18th August 2018)'. 'Complaint 2' was provided by the applicant somewhat later than 'Complaint 1' but I have had regard to it. The applicant has also confirmed that the document 'G.Little (18th August 2018)' was incorrectly labelled, and that it was the emailed letter to Mr G Little of Bury Council of the 12 August 2018 that was being referred to, and I have had regard to this in making my decision.

Reasons

4. The Government's Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and that this unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
5. The applicant considers that the Council has been inconsistent and unreasonable in its application of its own policies.
6. From the information before me, including the three documents referred to above, it is not evident that the Council has behaved unreasonably in refusing planning permission for the proposed extensions. The Council has assessed the impact of the proposed extensions on the Green Belt in accordance with the development plan and the National Planning Policy Framework (the Framework). The Council has also considered the applicant's family circumstances in reaching its decision.

7. The Council has assessed the impact of the proposed extensions on a non-designated heritage asset (NDHA) in accordance with the development plan and the Framework. I note that the applicant does not consider that Bramley Fold Farm should be identified as an NDHA. However, as set out in my main appeal decision, I am satisfied that the Council has identified the appeal property as an NDHA in accordance with national planning policy and guidance, that the applicant has been notified of this and has provided information to support the proposed extensions, as reasonably requested by the Council in the circumstances.
8. The applicant has provided details of correspondence with the Council in relation to an Environmental Information Regulations 2004 (EIR) request. This sought information in relation to policies relating to NDHAs; property summary sheets for certain properties on the draft local list of NDHAs; the notification processes for the owners of NDHAs; and whether planning applications for properties on the draft local list since 2010 have been required to submit heritage assessments. The EIR process and subsequent review are separate to the appeal process and this costs application. Consequently, they have not altered my overall determination of the appeal or of the costs application.
9. The applicant refers to a number of other decisions made by the Council at other nearby locations¹, to highlight what are considered to be inconsistent applications of policy. I note that the Council considers that *none of the other proposals referred to are the same or even closely similar developments to the appeal development*. However, I am not fully familiar with these proposals and based upon the limited information before me it would not be appropriate for me to comment upon them. As set out above, I am broadly satisfied with the Council's approach to assessing the impacts of the proposed extensions at the appeal property, including in terms of the application of its own development plan policies.
10. The applicant also refers to a number of other planning applications / approvals for properties on the draft local list that have not been required to submit a Heritage Statement. Again, I am not fully familiar with these proposals and as set out above, in respect of the appeal development, the Council's request for information was reasonable.
11. From the information before me, I find that unreasonable behaviour by the Council, resulting in unnecessary or wasted expense as described in PPG, has not been demonstrated.

Conclusion

12. For the reasons given above, I conclude that an award of costs is not justified.

Andrew Parkin

INSPECTOR

¹ 'Melrose'; Tonge Fold Farm; No 17 Bolton Road; and, No 31 Quarlton Drive.



Appeal Decisions

Site visit made on 29 January 2019

by A A Phillips BA(Hons) Dip TP MTP MRTPI

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

Decision date: 23 February 2019

Appeal A: APP/T4210/C/18/3195131

Twine Valley Farm, Church Road, Shuttleworth, Ramsbottom, Bury BL0 OEH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms J Brown of SR and RJ Brown Ltd against an enforcement notice issued by Bury Metropolitan Borough Council.
- The enforcement notice was issued on 31 January 2018.
- The breach of planning control as alleged in the notice is the erection of an agricultural building.
- The requirements of the notice are demolish and permanently remove the building, including the base and foundations.
- The period for compliance with the requirements is 60 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Appeal B: APP/T4210/W/18/3202305

Twine Valley Farm, Church Road, Shuttleworth, Ramsbottom, Bury BL0 OEH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against the refusal to grant prior approval required under Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015.
- The appeal is made by Mr J Brown against the decision of Bury Metropolitan Borough Council.
- The application Ref 62677, dated 6 April 2018 was refused by notice dated 8 May 2018.
- The development proposed is an agricultural building for the storage of silage.

Summary of Decision: The appeal is allowed.

Background

1. With respect to Appeal A it is my understanding that there is a deemed consent to carry out an agricultural development which complies with the limitations and conditions of Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO). The building the subject of the enforcement notice has been built in approximately the same location, but it is a different size and design from that approved. The existing building has been the subject of a planning appeal ¹ which was dismissed on 2 September 2016 for reasons relating to noise; however, at the time it was

¹ APP/T4210/W/16/3151468

proposed to use the building for housing livestock. The evidence before me, and my own site observations confirms that the building is not being used for housing livestock, but rather is being used for the storage of hay and machinery.

2. With respect to Appeal B I am aware that planning permission for an agricultural building for the storage of silage has previously been granted at the appeal site. That approval was for full planning permission because the footprint of the building was in excess of the limitations set out in the GPDO. I understand that the difference between the approved scheme and the current appeal proposal is that the height of the building is some 3 metres higher which is achieved by lowering the finished floor levels by approximately 1 metre. Consequently, the overall height difference is approximately 2 metres.
3. It is my understanding that an access track to the building is the subject of a separate enforcement investigation.

Appeal A on ground (a)

4. The appeal site is in the Green Belt and therefore the relevant policy context for establishing whether the development is inappropriate development in the Green Belt is paragraph 145 of the National Planning Policy Framework (the Framework) and Policy OL1/2 of the Bury Unitary Development Plan adopted August 1997 (the UDP). The use of the building is for agricultural purposes and this is not a matter of dispute between the main parties. It is important to note here that the Framework sets no specific limits for the scale of such a building and furthermore, as it is one of the exceptions given in paragraph 145 of the Framework, the effects of an agricultural building on the openness of the Green Belt are not relevant in considering whether they are inappropriate.
5. Therefore, for the purposes of the Framework and the UDP the development is not inappropriate development in the Green Belt.
6. Consequently, I consider the main issues to be:
 - i. The effect on the character and appearance of the Special Landscape Area;
 - ii. The effect on the living conditions of the occupants of adjoining residential properties with particular reference to noise; and
 - iii. Whether the development poses an unacceptable risk of ground water contamination.

Character and appearance of the Special Landscape Area

7. The site is located within a Special Landscape Area and occupies an elevated and prominent within its surroundings. It is elevated above Bamford Road and Church Road and forms part of the local wider open ground of steep hills which is scattered with agricultural buildings. The building is a substantial structure which has an agricultural character and appearance, being constructed of concrete panels with Yorkshire boarding and a corrugated sheeting roof. The building's open side faces onto agricultural land. It is immediately above existing agricultural buildings of similar construction which are situated at a significantly lower level.

8. The building is prominent and as a result of its overall bulk, massing, scale, design and materiality it is a visually intrusive structure within its relatively open and elevated landscape surroundings. It is visible from some nearby areas, including residential properties and it dominates its immediate surroundings. However, the building is screened from some views by existing buildings, landscaping and topography and is seen in the context of other nearby agricultural buildings. Only a few residential properties have windows which directly face the appeal site.
9. I am also aware that there is a proposal which has deemed consent which would have a slightly lower ridge and eaves height and would not include the open side facing onto the agricultural land. It would incorporate similar materials. The visual effects of that building would nevertheless be similar to the existing building which is the subject of the enforcement notice. Indeed, the deemed approval building would have potentially greater impact on the character and appearance of the area because it would not have an open side and corners. From some viewpoints it would be more visually intrusive and harmful to the Special Landscape Area.
10. Therefore, I conclude that the visual effects of the appeal building do not result in more significant harm to the character and appearance of the Special Landscape Area than those of the scheme which benefits from deemed consent. Although there is some conflict with Policies OL4/5, EN1/2 and EN 9/1 of the UDP and the Council's Development Control Policy Guidance Note 8: New Buildings in the Green Belt (January 2007) (the SPD), the conflict I have identified would be outweighed by the lack of significant harm above that of the development which has deemed consent.
11. In coming to this conclusion I have taken account of the fact that the Council disagrees with the conclusions of my colleague Inspector who dealt with the previous appeal for the site ²with regard to the comparison between the building which has deemed consent and the building which is the subject of the enforcement notice. I understand the difference between dealing with the retention of an unauthorised building and the distinct application for prior approval, but on the grounds that the prior approval could still be implemented I consider it entirely reasonable to take account of the differences between the two.

Living conditions

12. The building is a limited distance from residential properties; notably those along Church Street and Millhouse Street. The enforcement notice has been issued partly on basis that the building is being used for housing livestock, but at my site visit I noted that it is currently being used to store hay and machinery. In addition, the appellant has suggested that a suitably worded condition could be used to preclude the use of the building to keeping animals. I agree that this is a suitable approach and would mitigate the potential harm to living conditions relating to noise from animals. Should the building be used for keeping animals in the future the Council would be entitled to take appropriate action.

² APP/T4210/W/16/3151468

13. Therefore, on this issue I conclude that subject the use of a condition, the development would not have a harmful effect on the living conditions of the occupants of adjoining residential properties with particular reference to noise.

Ground water contamination

14. I have noted that this issue is identified as a reason for issuing the enforcement notice, but the Council has not provided evidence to support this in its Appeal Statement. There is insufficient evidence before me that any assessment of the risk of ground water contamination has been provided. Although contrary to the provisions of Policies ENV7/4 (Ground Water Protection) and ENV7/5 (Waste Water Management) of the UDP I am satisfied that a suitably worded condition could address the concerns and any conflict with the UDP. Consequently, I do not consider that this matter constitutes a reason to withhold the grant of planning permission in this case.

Other matters

15. In coming to my conclusions on this appeal I have had regard to the complex planning history of this and other adjacent sites and am aware of the previous approvals, refusals and investigations undertaken by the local planning authority.
16. Comments have been received with respect to the loss of trees and shrubs as result of the development that has taken place to date. A landscaping scheme, including tree and shrub planting will mitigate the harm that may have been caused by the loss of trees within the appeal site.
17. I have insufficient evidence that the stabilisation of land is requires with respect to the land on which the agricultural building has been erected. During my site visit I observed no obvious signs of the collapse of banking adjacent to the building.
18. The matter that the building has been erected without planning permission is not a reason in itself to dismiss the appeal. The development should be judged against material planning considerations.

Conclusion and conditions

19. I have concluded that the development is not inappropriate development in the Green Belt and that it does not result in significant harm to the character and appearance of the Special Landscape Area than the development which has deemed consent. Furthermore, I consider that the lack of evidence regarding ground water contamination could be controlled by a condition. The use of the building can be restricted to ensure it is not used for keeping animals and that approach would mitigate potential harm to living conditions from animal noises.
20. The appeal succeeds on ground (a) and planning permission will be granted.
21. The Council has not suggested conditions, but the appellant has done so. I have taken account of those and where necessary amended them in line with national policy and guidance. Conditions should only be used to enable a development to proceed by mitigating the adverse effects where it would otherwise have been necessary to refuse planning permission by dismissing this appeal on ground (a).

22. In order to safeguard the character and appearance of the area I have attached a condition relating to 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. I have also attached a condition to restrict the use of the building.

Appeal A on grounds (f) and (g)

23. It is unnecessary for me to consider whether the appeal on grounds (f) and (g) should succeed, as the enforcement Notice will be quashed in consequence of my decision to allow Appeal A on ground (a). I shall therefore take no further action on these grounds of appeal.

Appeal B

24. The provisions of the GPDO require the local planning authority to assess the proposed development on the basis of the siting, design and external appearance of the building. That is the basis on which I will determine the current appeal and therefore, in the light of the above, the main issues are:
- i. Whether the proposal would conflict with one of the reasons for including the land within the Green Belt; and
 - ii. The effect on the character and appearance of the Special Landscape Area.

Reasons

Green Belt purposes

25. The appeal site is located in the Green Belt and therefore the starting point in terms of policy is the Framework and the UDP. An agricultural building is not inappropriate development in the Green Belt. Therefore, as the effect of development on the openness and the purpose of including land within the Green Belt are not expressly stated as determinative factors in assessing inappropriateness for buildings for agriculture and forestry, there is no need for me to separately assess the effect of the development on the openness of the Green Belt or the purposes of including land within it.
26. Therefore, on this issue I conclude that the proposal would not conflict with the reasons for including the land within the Green Belt and there is no conflict with the Framework and Policy OL1/2 of the UDP.

Character and appearance of the Special Landscape Area

27. The proposed building would be located in a field which is part of a relatively steeply sloping hillside. There is a modern agricultural building to the west of the site which is the subject to appeal reference APP/T4210/C/18/3195131 and to the south, at a lower level, are other agricultural buildings. The wider landscape is characterised by scattered farmsteads with some groups of residential properties.
28. The proposed building would be a substantial structure measuring approximately 40 metres by 13.7 metres with an overall ridge height of approximately 8.3 metres and an eaves height of approximately 6.9 metres. The building would have a green corrugated steel roof and pre-cast concrete slab walls. The only opening would be in the east facing elevation. It is my

understanding that the proposal also includes a hardstanding area and new access track, but these elements of the scheme do not appear to be the subject of the Council's refusal.

29. I am aware that planning permission has been previously granted on appeal for the erection of a silage building on the same site; however, the current proposal is higher than that scheme which showed a ridge height of approximately 5.35 metres and an eaves height of approximately 3.8 metres. Therefore, in determining the current appeal a key consideration is the effect of the additional height, scale and massing of the proposal in the context of the sensitive landscape setting.
30. The building would be a large structure constructed of materials that are acceptable for an agricultural building of this type. The scale, mass and bulk of the building, when combined with its elevated position, means that it would be a significant visual feature within the surrounding landscape. However, from most viewpoints, locally, including roads and footpaths the building would be seen in the context of the existing agricultural buildings that form part of the larger farmstead. Consequently, I do not consider that it would be seen as a new isolated building, but rather part of the group of agricultural buildings and as such it would not be an incongruous or unacceptably visually intrusive feature in the landscape.
31. I also observed at my site inspection that many of the houses in the area do not face directly towards the site and from those that do, there are other buildings, landscaping and topographical features that would largely screen the building from view. I can see that it would be visible from some properties which face onto Bamford Road, but from those it would be seen largely in the context of the other agricultural buildings.
32. I can understand that some would not describe the local agricultural buildings as being particularly attractive, but they are typical farm buildings and ones which can reasonably expect to be found in a location such as this, including in an area of Special Landscape Value or the Green Belt. Consequently, I do not find that the building would be harmful to the rural character of the area.
33. I have also taken account of the fact that prior approval has previously been granted for an agricultural building for silage on the appeal site. I acknowledge that the current proposal is for a larger building, but I do not find that the additional bulk, scale and massing would be significant in terms of the impact on the character and appearance of the surrounding area.
34. Therefore, on this issue, the proposal would not be harmful to the character and appearance of the Special Landscape Area. As a result, I find there to be no conflict with Policies OL1/2 and EN1/1 of the UDP and the SPD. These seek to ensure that developments are of a high standard of design and do not have a detrimental effect on the visual amenity and relate well to existing buildings.

Other matters

35. I am aware of there being some local opposition to the proposal. The proposal would be visible from some properties, but I do not consider the building would be unduly harmful with respect to the outlook from these properties.
36. I am aware that silage may produce an odour which some may find unpleasant, but the building would be mostly enclosed with there only being

one opening in the east elevation, which does not directly face properties. In addition, I noted at my site visit that a large number of animals are housed in nearby agricultural buildings at certain times of the year. As such there are likely to be agricultural odours in this rural setting. There is insufficient evidence before me to establish that the odours likely to emanate from the use of the building for storing silage would lead to unacceptable levels of odour above and beyond those that are likely to be reasonably experienced in rural areas. In any case this is not a matter before me in dealing with this particular type of appeal.

37. I am also aware that some concern has been expressed with reference to the effect of the development on house prices. However, it is a well-established principle that the planning system does not exist to protect private interests such as the value of land or property.
38. In terms of the living conditions, some concern has been expressed regarding the effect on light and highways safety. These are not matters before me in dealing with a prior approval appeal.

Conclusion

39. For the reasons given above and taking account of other matters raised I conclude that the appeal should be allowed.
40. In granting approval the appellant should note that the GPDO states at paragraph A.2 of Schedule 2, Part 6, Class A that the development must be carried out within a period of 5 years from the date on which the local planning authority were given the information referred to in paragraph (d)(ii) of paragraph A.2 (2).

Formal Decisions

Appeal A

41. The enforcement notice is quashed and planning permission is granted for the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the erection of an agricultural building subject to the following conditions:
 1. Unless within 2 months of the date of this decision a landscaping scheme, including an implementation programme, and details of the foul and surface water drainage and any storage tank for the storage of slurry, if necessary are submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 60 days of the local planning authority's approval, the agricultural building hereby permitted shall be removed and the land restored to its condition prior to the construction of the building. The landscaping scheme shall include boundary treatments, planting plans, written specifications (including soil depths, cultivation and other operations associated with plant and grass establishment), and scheduling of plants noting species, planting sizes and proposed numbers and densities.

If no schemes in accordance with this condition are approved within 4 months of the date of this decision, the agricultural building hereby permitted shall be removed and the land restored to its condition prior to the construction of the building.

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. Upon implementation of the approved schemes specified in this condition, those schemes shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

2. The agricultural building hereby approved shall not be used for the keeping of animals without any written prior approval of the local planning authority.

Appeal B

42. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015 for the erection of an agricultural building for the storage of silage at land at Twine Valley Farm, Church Road, Shuttleworth, Ramsbottom, Bury BLO OEH in accordance with the terms of the application Ref 62677, dated 6 April 2018, and the plans submitted with it.

A A Phillips

INSPECTOR

Appeal Decision

Site visit made on 2 October 2018

by W Johnson BA (Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 February 2019

Appeal Ref: APP/T4210/W/18/3208242

Unit 1-3, Goodlad Street, Bury BL8 1SX

- 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 Andy Dempsey, Fenster Trade Frames against the decision of Bury Metropolitan Borough Council.
 - The application Ref 62837, dated 22 May 2018, was refused by notice dated 5 July 2018.
 - The development is the placement of palisade fencing and gate along part of the boundary to the site.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The Revised National Planning Policy Framework (the Framework) was published in July 2018, after the appeal was lodged. I have had regard to the Revised Framework in reaching my decision.
3. At the time of my site visit, I saw that the boundary fencing was installed, and thus I have had the benefit of seeing the scheme in place. It also is for this reason I have expressed the description of development as I have above. My use of the description in this way does not fundamentally change the scheme before me or each party's case in relation to it. I have proceeded on this basis.

Main Issues

4. The main issues are the effect of the proposal on highway safety; and, the character and appearance the area.

Reasons

Highway Safety

5. The appeal site is in an area of mixed commercial and residential uses. It is an irregular shaped parcel of land, which is hard surfaced and enclosed by galvanised steel palisade fencing. The fencing surrounds the car park/yard area of the premises and extends along part of the boundaries with Goodlad Street and Back Byrom Street. It faces the front elevations of residential properties on the former and rear elevations on the latter. The majority of the appeal site abuts other commercial uses.
6. During my site visit I noted the original access to the property from Goodlad Street, which is situated in close proximity to the building and in turn the first

set of large steel doors on the elevation. At this point there are lowered vehicular crossing points in the pavement. The palisade fencing on this section of the boundary extends from the building, across the original access, and along majority of the boundary with the adjoining footpath, until it is then chamfered to the fencing that has been erected on the boundary with Back Byrom Street. This has now resulted in the car park/yard being fully enclosed, and the access being relocated to the chamfered section, which crosses part of the footpath on Goodlad Street.

7. Whilst the semi permeable nature of the fencing allows some views through it, at 2.4 metres in height and of a substantial length it is nevertheless restrictive on views out of the access point, accordingly limiting visibility for exiting vehicles, particularly in relation to being able to see vehicles travellers from the Tottington Road direction.
8. Also during my site visit I observed a significant amount of on street car parking on Goodlad Street in the area outside the gates to the appeal property. This further restricts visibility and manoeuvrability for emerging vehicles, especially larger ones.
9. With the above in mind, the scheme unacceptably harms highway safety with particular regard to the existing access to the site and the available visibility therefrom. This would result in conflict with the requirements of 'Saved' Policy HT6/2 of the UDP¹, which seeks, amongst other things, to reduce pedestrian/vehicular conflict. The proposal would also be contrary to paragraph 108 b) of the Framework, which, amongst other things, seeks that safe and suitable access to the site can be achieved for all users.
10. The appellant states that the fence is required in the interests of security, health and safety, and improving the operation of the business. Whilst this clearly forms an important consideration for the appellant, it does not outweigh the harm of the proposal in terms of highway safety. I have noted the suggested condition by the appellant in their statement relating to the submission of additional details but, I consider that this would not be a suitable approach in this instance as I have concerns that the suggested condition would not pass the test of enforceability having regard to Planning Practice Guidance.

Character and Appearance

11. The area surrounding the appeal site is defined by buildings adjoining the footpath. These buildings are in the form of the brick commercial building associated with the appeal site, and terraced dwellings on the opposite side of the road that are primarily constructed out of stone and brick. However, in some instances the brick dwellings have been rendered. Additionally, the boundary treatments to the rear yards of the terraced dwellings located on Byrom Street facing Back Byrom Street comprise brick or block walls, and timber panel fencing, amongst other things. The car park/yard provides an important open area, which provides some relief amongst the narrow streets and dense built environment.
12. In my view, the fencing significantly detracts from the character and visual qualities of the streetscene. The introduction of high sided palisade fencing in

¹ Bury Unitary Development Plan 1997

this location has formed an incongruous feature, which is significantly at odds with the character and appearance of its surroundings. I note that the appellant has suggested that they are willing to consider a reduction in height, so far as it still provides security for the premises. However, I do not believe that such a measure would provide sufficient mitigation to overcome its overall harmful visual effect, as any reduction would only be minimal if it was to be effective for security purposes, and would therefore still have a stark and imposing appearance when measured against the other types and heights of boundary treatment in the area.

13. I conclude that the development has an unacceptably harmful impact upon the character and appearance of the appeal site and the surrounding area. It thus does not comply with Policy EN1/2 of the UDP, which requires development not to have an unacceptable adverse effect on the particular character and townscape of the Borough's towns, villages and other settlements.
14. The development would also conflict with Section 12 of the Framework for achieving well-designed places. In particular paragraph 127 requires development, amongst other things, to add to the overall quality of the area, be visually attractive, and be sympathetic to local character including the surrounding built environment. The development further contradicts the Council's advice within Guidance Note 16, Design and Layout of New Development in Bury 2008, which requires a need for attractive development that is fit-for-purpose.

Other Matters

15. The appellant has indicated that there are no objections from neighbouring occupiers, and that he has facilitated some neighbours to park their cars in the yard overnight. However, these factors do not alter my conclusions on the main issues. I have considered this appeal on its own particular merits and concluded that it causes harm and conflicts with the development plan for the reasons set out above.
16. My attention has been drawn to various sites in the locality, many of which I was able to observe on my visit, that have security fencing of some kind. However, whilst recognising that there appear to be some similarities with the appeal scheme, I do not have the full details of those developments or the background to any decisions that permitted them. Moreover, on the limited details available to me, I am not satisfied that the location of the other sites, the relative importance of the fencing in each case or the site specific effect thereof are directly comparable to that of the scheme before me.
17. The appeal site is located in a mixed area of commercial and residential properties with examples of galvanised palisade fencing in existence. This does not mean however that other examples of similar fencing should be allowed. In the examples referenced by the appellant is one of either powder coated or painted paladin style fencing at Oakwood Motor Company, which is a significant improvement visually on the other examples, which consist of galvanised palisade style fencing, similar to that at the appeal site. I recognise that the fencing at the appeal site is relatively new and that the galvanised appearance will darken with age, but this will not be sufficient in itself to reduce its harmful visual effect.

Conclusion

18. For the reasons given above, and having regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

W Johnson

INSPECTOR

Details of Enforcement Appeal Decisions
between 11/02/2019 and 17/03/2019



Location: Twine Valley Farm, Church Road, Shuttleworth, Ramsbottom, Bury, BL0 2FH

Case Ref:
0099 / 16

Issue: Agricultural building

Appeal Decision: Allowed 23/02/2019

Location: Land at Lower Kirklees Street, Tottington, Bury, BL8 3NY

Case Ref:
0415 / 17

Issue: Creation of a hard-standing access track

Appeal Decision: Allowed 07/03/2019



Appeal Decisions

Site visit made on 29 January 2019

by A A Phillips BA(Hons) Dip TP MTP MRTPI

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

Decision date: 23 February 2019

Appeal A: APP/T4210/C/18/3195131

**Twine Valley Farm, Church Road, Shuttleworth, Ramsbottom, Bury BL0
OEH**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms J Brown of SR and RJ Brown Ltd against an enforcement notice issued by Bury Metropolitan Borough Council.
- The enforcement notice was issued on 31 January 2018.
- The breach of planning control as alleged in the notice is the erection of an agricultural building.
- The requirements of the notice are demolish and permanently remove the building, including the base and foundations.
- The period for compliance with the requirements is 60 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Appeal B: APP/T4210/W/18/3202305

**Twine Valley Farm, Church Road, Shuttleworth, Ramsbottom, Bury BL0
OEH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against the refusal to grant prior approval required under Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015.
- The appeal is made by Mr J Brown against the decision of Bury Metropolitan Borough Council.
- The application Ref 62677, dated 6 April 2018 was refused by notice dated 8 May 2018.
- The development proposed is an agricultural building for the storage of silage.

Summary of Decision: The appeal is allowed.

Background

1. With respect to Appeal A it is my understanding that there is a deemed consent to carry out an agricultural development which complies with the limitations and conditions of Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO). The building the subject of the enforcement notice has been built in approximately the same location, but it is a different size and design from that approved. The existing building has been the subject of a planning appeal ¹ which was dismissed on 2 September 2016 for reasons relating to noise; however, at the time it was

¹ APP/T4210/W/16/3151468

proposed to use the building for housing livestock. The evidence before me, and my own site observations confirms that the building is not being used for housing livestock, but rather is being used for the storage of hay and machinery.

2. With respect to Appeal B I am aware that planning permission for an agricultural building for the storage of silage has previously been granted at the appeal site. That approval was for full planning permission because the footprint of the building was in excess of the limitations set out in the GPDO. I understand that the difference between the approved scheme and the current appeal proposal is that the height of the building is some 3 metres higher which is achieved by lowering the finished floor levels by approximately 1 metre. Consequently, the overall height difference is approximately 2 metres.
3. It is my understanding that an access track to the building is the subject of a separate enforcement investigation.

Appeal A on ground (a)

4. The appeal site is in the Green Belt and therefore the relevant policy context for establishing whether the development is inappropriate development in the Green Belt is paragraph 145 of the National Planning Policy Framework (the Framework) and Policy OL1/2 of the Bury Unitary Development Plan adopted August 1997 (the UDP). The use of the building is for agricultural purposes and this is not a matter of dispute between the main parties. It is important to note here that the Framework sets no specific limits for the scale of such a building and furthermore, as it is one of the exceptions given in paragraph 145 of the Framework, the effects of an agricultural building on the openness of the Green Belt are not relevant in considering whether they are inappropriate.
5. Therefore, for the purposes of the Framework and the UDP the development is not inappropriate development in the Green Belt.
6. Consequently, I consider the main issues to be:
 - i. The effect on the character and appearance of the Special Landscape Area;
 - ii. The effect on the living conditions of the occupants of adjoining residential properties with particular reference to noise; and
 - iii. Whether the development poses an unacceptable risk of ground water contamination.

Character and appearance of the Special Landscape Area

7. The site is located within a Special Landscape Area and occupies an elevated and prominent within its surroundings. It is elevated above Bamford Road and Church Road and forms part of the local wider open ground of steep hills which is scattered with agricultural buildings. The building is a substantial structure which has an agricultural character and appearance, being constructed of concrete panels with Yorkshire boarding and a corrugated sheeting roof. The building's open side faces onto agricultural land. It is immediately above existing agricultural buildings of similar construction which are situated at a significantly lower level.

8. The building is prominent and as a result of its overall bulk, massing, scale, design and materiality it is a visually intrusive structure within its relatively open and elevated landscape surroundings. It is visible from some nearby areas, including residential properties and it dominates its immediate surroundings. However, the building is screened from some views by existing buildings, landscaping and topography and is seen in the context of other nearby agricultural buildings. Only a few residential properties have windows which directly face the appeal site.
9. I am also aware that there is a proposal which has deemed consent which would have a slightly lower ridge and eaves height and would not include the open side facing onto the agricultural land. It would incorporate similar materials. The visual effects of that building would nevertheless be similar to the existing building which is the subject of the enforcement notice. Indeed, the deemed approval building would have potentially greater impact on the character and appearance of the area because it would not have an open side and corners. From some viewpoints it would be more visually intrusive and harmful to the Special Landscape Area.
10. Therefore, I conclude that the visual effects of the appeal building do not result in more significant harm to the character and appearance of the Special Landscape Area than those of the scheme which benefits from deemed consent. Although there is some conflict with Policies OL4/5, EN1/2 and EN 9/1 of the UDP and the Council's Development Control Policy Guidance Note 8: New Buildings in the Green Belt (January 2007) (the SPD), the conflict I have identified would be outweighed by the lack of significant harm above that of the development which has deemed consent.
11. In coming to this conclusion I have taken account of the fact that the Council disagrees with the conclusions of my colleague Inspector who dealt with the previous appeal for the site ²with regard to the comparison between the building which has deemed consent and the building which is the subject of the enforcement notice. I understand the difference between dealing with the retention of an unauthorised building and the distinct application for prior approval, but on the grounds that the prior approval could still be implemented I consider it entirely reasonable to take account of the differences between the two.

Living conditions

12. The building is a limited distance from residential properties; notably those along Church Street and Millhouse Street. The enforcement notice has been issued partly on basis that the building is being used for housing livestock, but at my site visit I noted that it is currently being used to store hay and machinery. In addition, the appellant has suggested that a suitably worded condition could be used to preclude the use of the building to keeping animals. I agree that this is a suitable approach and would mitigate the potential harm to living conditions relating to noise from animals. Should the building be used for keeping animals in the future the Council would be entitled to take appropriate action.

² APP/T4210/W/16/3151468

13. Therefore, on this issue I conclude that subject the use of a condition, the development would not have a harmful effect on the living conditions of the occupants of adjoining residential properties with particular reference to noise.

Ground water contamination

14. I have noted that this issue is identified as a reason for issuing the enforcement notice, but the Council has not provided evidence to support this in its Appeal Statement. There is insufficient evidence before me that any assessment of the risk of ground water contamination has been provided. Although contrary to the provisions of Policies ENV7/4 (Ground Water Protection) and ENV7/5 (Waste Water Management) of the UDP I am satisfied that a suitably worded condition could address the concerns and any conflict with the UDP. Consequently, I do not consider that this matter constitutes a reason to withhold the grant of planning permission in this case.

Other matters

15. In coming to my conclusions on this appeal I have had regard to the complex planning history of this and other adjacent sites and am aware of the previous approvals, refusals and investigations undertaken by the local planning authority.
16. Comments have been received with respect to the loss of trees and shrubs as result of the development that has taken place to date. A landscaping scheme, including tree and shrub planting will mitigate the harm that may have been caused by the loss of trees within the appeal site.
17. I have insufficient evidence that the stabilisation of land is requires with respect to the land on which the agricultural building has been erected. During my site visit I observed no obvious signs of the collapse of banking adjacent to the building.
18. The matter that the building has been erected without planning permission is not a reason in itself to dismiss the appeal. The development should be judged against material planning considerations.

Conclusion and conditions

19. I have concluded that the development is not inappropriate development in the Green Belt and that it does not result in significant harm to the character and appearance of the Special Landscape Area than the development which has deemed consent. Furthermore, I consider that the lack of evidence regarding ground water contamination could be controlled by a condition. The use of the building can be restricted to ensure it is not used for keeping animals and that approach would mitigate potential harm to living conditions from animal noises.
20. The appeal succeeds on ground (a) and planning permission will be granted.
21. The Council has not suggested conditions, but the appellant has done so. I have taken account of those and where necessary amended them in line with national policy and guidance. Conditions should only be used to enable a development to proceed by mitigating the adverse effects where it would otherwise have been necessary to refuse planning permission by dismissing this appeal on ground (a).

22. In order to safeguard the character and appearance of the area I have attached a condition relating to 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. I have also attached a condition to restrict the use of the building.

Appeal A on grounds (f) and (g)

23. It is unnecessary for me to consider whether the appeal on grounds (f) and (g) should succeed, as the enforcement Notice will be quashed in consequence of my decision to allow Appeal A on ground (a). I shall therefore take no further action on these grounds of appeal.

Appeal B

24. The provisions of the GPDO require the local planning authority to assess the proposed development on the basis of the siting, design and external appearance of the building. That is the basis on which I will determine the current appeal and therefore, in the light of the above, the main issues are:
- i. Whether the proposal would conflict with one of the reasons for including the land within the Green Belt; and
 - ii. The effect on the character and appearance of the Special Landscape Area.

Reasons

Green Belt purposes

25. The appeal site is located in the Green Belt and therefore the starting point in terms of policy is the Framework and the UDP. An agricultural building is not inappropriate development in the Green Belt. Therefore, as the effect of development on the openness and the purpose of including land within the Green Belt are not expressly stated as determinative factors in assessing inappropriateness for buildings for agriculture and forestry, there is no need for me to separately assess the effect of the development on the openness of the Green Belt or the purposes of including land within it.
26. Therefore, on this issue I conclude that the proposal would not conflict with the reasons for including the land within the Green Belt and there is no conflict with the Framework and Policy OL1/2 of the UDP.

Character and appearance of the Special Landscape Area

27. The proposed building would be located in a field which is part of a relatively steeply sloping hillside. There is a modern agricultural building to the west of the site which is the subject to appeal reference APP/T4210/C/18/3195131 and to the south, at a lower level, are other agricultural buildings. The wider landscape is characterised by scattered farmsteads with some groups of residential properties.
28. The proposed building would be a substantial structure measuring approximately 40 metres by 13.7 metres with an overall ridge height of approximately 8.3 metres and an eaves height of approximately 6.9 metres. The building would have a green corrugated steel roof and pre-cast concrete slab walls. The only opening would be in the east facing elevation. It is my

understanding that the proposal also includes a hardstanding area and new access track, but these elements of the scheme do not appear to be the subject of the Council's refusal.

29. I am aware that planning permission has been previously granted on appeal for the erection of a silage building on the same site; however, the current proposal is higher than that scheme which showed a ridge height of approximately 5.35 metres and an eaves height of approximately 3.8 metres. Therefore, in determining the current appeal a key consideration is the effect of the additional height, scale and massing of the proposal in the context of the sensitive landscape setting.
30. The building would be a large structure constructed of materials that are acceptable for an agricultural building of this type. The scale, mass and bulk of the building, when combined with its elevated position, means that it would be a significant visual feature within the surrounding landscape. However, from most viewpoints, locally, including roads and footpaths the building would be seen in the context of the existing agricultural buildings that form part of the larger farmstead. Consequently, I do not consider that it would be seen as a new isolated building, but rather part of the group of agricultural buildings and as such it would not be an incongruous or unacceptably visually intrusive feature in the landscape.
31. I also observed at my site inspection that many of the houses in the area do not face directly towards the site and from those that do, there are other buildings, landscaping and topographical features that would largely screen the building from view. I can see that it would be visible from some properties which face onto Bamford Road, but from those it would be seen largely in the context of the other agricultural buildings.
32. I can understand that some would not describe the local agricultural buildings as being particularly attractive, but they are typical farm buildings and ones which can reasonably expect to be found in a location such as this, including in an area of Special Landscape Value or the Green Belt. Consequently, I do not find that the building would be harmful to the rural character of the area.
33. I have also taken account of the fact that prior approval has previously been granted for an agricultural building for silage on the appeal site. I acknowledge that the current proposal is for a larger building, but I do not find that the additional bulk, scale and massing would be significant in terms of the impact on the character and appearance of the surrounding area.
34. Therefore, on this issue, the proposal would not be harmful to the character and appearance of the Special Landscape Area. As a result, I find there to be no conflict with Policies OL1/2 and EN1/1 of the UDP and the SPD. These seek to ensure that developments are of a high standard of design and do not have a detrimental effect on the visual amenity and relate well to existing buildings.

Other matters

35. I am aware of there being some local opposition to the proposal. The proposal would be visible from some properties, but I do not consider the building would be unduly harmful with respect to the outlook from these properties.
36. I am aware that silage may produce an odour which some may find unpleasant, but the building would be mostly enclosed with there only being

one opening in the east elevation, which does not directly face properties. In addition, I noted at my site visit that a large number of animals are housed in nearby agricultural buildings at certain times of the year. As such there are likely to be agricultural odours in this rural setting. There is insufficient evidence before me to establish that the odours likely to emanate from the use of the building for storing silage would lead to unacceptable levels of odour above and beyond those that are likely to be reasonably experienced in rural areas. In any case this is not a matter before me in dealing with this particular type of appeal.

37. I am also aware that some concern has been expressed with reference to the effect of the development on house prices. However, it is a well-established principle that the planning system does not exist to protect private interests such as the value of land or property.
38. In terms of the living conditions, some concern has been expressed regarding the effect on light and highways safety. These are not matters before me in dealing with a prior approval appeal.

Conclusion

39. For the reasons given above and taking account of other matters raised I conclude that the appeal should be allowed.
40. In granting approval the appellant should note that the GPDO states at paragraph A.2 of Schedule 2, Part 6, Class A that the development must be carried out within a period of 5 years from the date on which the local planning authority were given the information referred to in paragraph (d)(ii) of paragraph A.2 (2).

Formal Decisions

Appeal A

41. The enforcement notice is quashed and planning permission is granted for the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the erection of an agricultural building subject to the following conditions:
 1. Unless within 2 months of the date of this decision a landscaping scheme, including an implementation programme, and details of the foul and surface water drainage and any storage tank for the storage of slurry, if necessary are submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 60 days of the local planning authority's approval, the agricultural building hereby permitted shall be removed and the land restored to its condition prior to the construction of the building. The landscaping scheme shall include boundary treatments, planting plans, written specifications (including soil depths, cultivation and other operations associated with plant and grass establishment), and scheduling of plants noting species, planting sizes and proposed numbers and densities.

If no schemes in accordance with this condition are approved within 4 months of the date of this decision, the agricultural building hereby permitted shall be removed and the land restored to its condition prior to the construction of the building.

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. Upon implementation of the approved schemes specified in this condition, those schemes shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

2. The agricultural building hereby approved shall not be used for the keeping of animals without any written prior approval of the local planning authority.

Appeal B

42. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015 for the erection of an agricultural building for the storage of silage at land at Twine Valley Farm, Church Road, Shuttleworth, Ramsbottom, Bury BLO OEH in accordance with the terms of the application Ref 62677, dated 6 April 2018, and the plans submitted with it.

A A Phillips

INSPECTOR



Appeal Decision

Site visit made on 29 January 2019

by **A A Phillips BA(Hons) DipTP MTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 February 2019

Appeal Ref: APP/T4210/C/18/3205657

Land and property at Kirklees Street, Tottington BL8 3NY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Jason Briggs against an enforcement notice issued by Bury Metropolitan Borough Council.
- The enforcement notice was issued on 5 June 2018.
- The breach of planning control as alleged in the notice is an engineering operation consisting of the creation of a vehicular access by the importation of bricks, rubble and other material to create a hard-surface access track.
- The requirements of the notice are
 - a) Permanently remove the hard-surface access track from the site including the base material.
 - b) Return the land to its condition prior to the engineering works taking place by re-grading the mounds of earth/top soil material stockpiled on the land which were created as part of the construction of the access track.
- The period for compliance with the requirements is:
 - 1) To complete step (a) above – 60 days.
 - 2) To complete step (b) above – 60 days.Total time for compliance – 60 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

The appeal on ground (c)

1. The ground of appeal is that the matter alleged does not constitute a breach of planning control. The engineering operation to create the access constitutes development within the meaning of s55 of the Act for which planning permission is required. I understand that no express planning permission has been granted by the Council for the development.
2. Class A of Schedule 2, Part 10 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) which relates to "Repairs to services" states that *"The carrying out of any works for the purposes of inspecting, repairing or renewing any sewer, main, pipe, cable or other apparatus, including breaking open any land for that purpose"* is permitted development.
3. The permission granted by the GPDO is only for repairs to services and it does not therefore permit the carrying out of works for the installation of service, which would include the over ground apparatus and housing unit which has been installed on the land the subject of the enforcement notice. The Council

contends that the services, over ground apparatus and housing unit were carried out after the engineering operations the subject of the enforcement notice took place. Consequently, the Council does not consider that the appellant can rely on Part 10, Class A to provide the deemed consent required. I have noted that in support of this argument, the Council has provided little evidence.

4. I agree that permitted development rights cannot be applied retrospectively; however, the appellant clearly states that it is not the case that the services, including water pipes and power supplies have been provided after the provision of the hard-surface access. Comments received from interested parties also indicate to me that the services were laid prior to the creation of the access and there is insufficient evidence to support the Council's position that the services were installed after the creation of the access track.
5. It is my understanding that the appeal site forms part of a larger site which includes stables and a residential caravan. The appellant has confirmed that there have been stables on the land for many years and the residential caravan has also been on the site for very many years and contends that the services were installed some time ago to service these. This seems to me to be a reasonable argument as I can see that stables and a residential caravan can reasonably expect to be serviced with electricity and water.
6. The Council has also referred to Article 3(5) of the GPDO which states that the permission granted by Schedule 2 of the Order does not apply if "*in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful*". The Council argues that the service inspection house requires planning permission as a building which does not benefit from permitted development rights. Irrespective of whether or not the inspection house requires planning permission, the appellant would still be entitled to inspect, repair or renew the services on the land with or without the inspection housing being present. In that regard the presence or otherwise of the inspection housing is not directly relevant to the determination of whether the access is permitted development.
7. Therefore, I conclude that having taken account of the evidence before me the development the subject of the enforcement notice is permitted by virtue of the provisions of Class A of Schedule 2, Part 10 of the GPDO as the carrying out of any works for the purposes of inspecting, repairing or renewing services.
8. The appellant and the Council also disagree as to whether the development is permitted under the provisions of Part 2, Class B of the GPDO which relates to the formation, laying out and construction of a means of access to a highway which is not a trunk road or classified road. However, in these circumstances where I have concluded that the development the subject of the enforcement notice is permitted development, I do not need to conclude against any other Part of the GPDO.

Conclusion

9. For the reasons given above I conclude that the appeal should succeed on ground (c). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under grounds (a), (f) and (g) of section 174(2) to the 1990 Act as amended and the application for planning permission deemed

to have been made under section 177(5) if the 1990 Act as amended do not need to be considered.

Formal Decision

10. The appeal is allowed and the enforcement notice is quashed.

A A Phillips

INSPECTOR