

**ROYAL BOROUGH OF WINDSOR & MAIDENHEAD
PLANNING COMMITTEE**

MAIDENHEAD DEVELOPMENT CONTROL PANEL

26 October 2016

Item: 2

Application No.:	16/01884/VAR
Location:	Bears Copse Plough Lane West End Waltham St Lawrence Reading RG10 0NN
Proposal:	Erection of an agricultural barn (retrospective) as approved under planning permission 11/00341 (allowed on appeal) without complying with condition 1 (use as agricultural purpose only) to remove the condition
Applicant:	Mr Hall
Agent:	Mr T Rumble
Parish/Ward:	Waltham St Lawrence Parish/Hurley And Walthams Ward
If you have a question about this report, please contact: Susan Sharman on 01628 685320 or at susan.sharman@rbwm.gov.uk	

1. SUMMARY

- 1.1 Based on the particular evidence available, there are no site-specific factors that constitute 'exceptional circumstances' that would make it necessary and reasonable to impose condition 1 requiring the barn to be used solely for agricultural purposes.

It is recommended the Panel grants planning permission with the conditions listed in Section 8 of this report:

2. REASON FOR PANEL DETERMINATION

- At the request of Councillor M. Hunt if the application is to be recommended for approval at the request of the Parish Council with regard to the appeal decision. The condition was imposed by the Inspector and accepted by the applicant. Environmental impact concern regarding use of narrow rural Green Belt lane.

3. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

- 3.1 The application site is located to the south-west of the residential property of 'Bears Copse'. The area is characterised by open countryside with sporadic residential development.

4. DESCRIPTION OF THE PROPOSAL AND ANY RELEVANT PLANNING HISTORY

Ref.	Description	Decision and Date
11/00341/FULL	Erection of an agricultural barn (retrospective).	Refused 06.04.11 Appeal allowed 05.03.12.
09/01356/AGDET	Notification of change of use from residential curtilage to agriculture and to determine whether prior approval is required to relocate an existing barn.	Approved 04.08.09.

- 4.1 The application seeks to remove condition 1 (use for agricultural purposes only) of 11/00341 (allowed on appeal).

5. EXPLANATION OF RECOMMENDATION

- 5.1 The key issue for consideration is whether condition 1 of 11/00341 (allowed on appeal) is reasonable and necessary.

- 5.2 Condition 1 states that: *“Notwithstanding the terms of the application, including the Design and Access Statement, the building hereby permitted shall be used for no other purposes than uses associated with agriculture.”* In terms of reasoning the Inspector concluded, at paragraph 37 that: *“For the removal of doubt it is also necessary to impose a condition restricting the use of the barn to uses associated with agriculture.”* At the time of the appeal decision on 05 March 2012, the Inspector considered that this restrictive condition was necessary in the circumstances.
- 5.3 Section 73 of the *Town and Country Planning Act 1990* allows an applicant to seek planning permission for the development of land without complying with a condition. Planning Practice Guidance (PPG) explains the approach that local planning authorities should take in relation to section 73 applications, at paragraph 31: *“In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application.”*
- 5.4 The condition must be assessed against the test set out in the NPPF. The implementation of the NPPF postdates the Inspector’s decision in this case. Each of the tests must be satisfied each time a decision to grant permission subject to conditions is made. Paragraph 206 of the NPPF explains that: *“Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.”* “Necessary” means that the condition must be required in order to make the development acceptable in planning terms. The National Planning Policy Guidance (NPPG), at paragraph 004 of the section ‘Use of Planning Conditions’, asks: *“Will it be appropriate to refuse planning permission without the requirements imposed by the condition? A condition must not be imposed unless there is a definite planning reason for it, i.e. it is needed to make the development acceptable in planning terms. If a condition is wider in scope than is necessary to achieve the desired objective it will fail the test of necessity.”* The local planning authority must therefore consider whether there is a ‘definite planning reason’ for the imposition of this condition.
- 5.5 NPPG advice is also particularly restrictive in relation to conditions restricting the future use of permitted development rights, advising at paragraph 17 of the section ‘Use of Planning Conditions’: *“Is it appropriate to use conditions to restrict the future use of permitted development rights or changes of use? Conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015, so that it is clear exactly which rights have been limited or withdrawn. Area wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. The local planning authority also has powers under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 to enable them to withdraw permitted development rights across a defined area.”*
- 5.6 The Inspector’s reason for the imposition of the condition is found at paragraph 24 of the decision letter: *“As reasoned above there is no evidence to dispute that the barn was initially used solely for the purpose of agriculture. If the use is so restricted by condition and by upholding Appeal B the barn would not be inappropriate development in the Green Belt.”* It was therefore clearly contemplated by the Inspector that the limiting condition was necessary to make the development acceptable in Green Belt terms. This does constitute a ‘definite planning reason’ for the purposes of the NPPF. However, for exceptional circumstances to exist there needs to be a greater degree of harm than inappropriate development in the Green Belt alone.
- 5.7 In this case the use of the land for non-agricultural use would impact on openness and would conflict with one of the purposes of including land in the Green Belt, namely to assist in safeguarding the countryside from encroachment (as found by the Inspector in 2012, at paragraph 11). It is also noted that the Parish Council’s comments that the condition is considered ‘necessary’ due to the quiet residential location of the lane and the existence of the new flexible use class. However as established above, ‘necessary’ refers to planning considerations which would otherwise result in the refusal of an application, and are therefore necessary to make the application acceptable. Neither of those points would have that effect.

- 5.8 The original officer's report associated with application 11/00341 identified the main issues as being the impact on the character and appearance of the area (identified by the Inspector and conditioned) and the impact on the Green Belt (which as established above, is not sufficient to constitute exceptional circumstances in isolation). However, for exceptional circumstances to exist there would need to be firm and specific reasons, based on particular evidence which indicates how and what site-specific factors constitute 'exceptional circumstances' for the purposes of the NPPF. There is no such evidence in this case.
- 5.9 It is considered that condition 1 fails the test for necessity. Although it was considered necessary in 2012, since then the NPPF and NPPG have changed the recommended approach a local planning authority should take in relation to conditions restricting the future use of permitted development rights.
- 5.10 Overall and on balance, it is not considered that there are exceptional circumstances which would justify the condition and render it necessary.

6. CONSULTATIONS CARRIED OUT

Comments from interested parties

7 occupiers were notified directly of the application.

The planning officer posted a notice advertising the application at the site on 14th July 2016.

1 letter was received objecting to the application, summarised as:

Comment	Where in the report this is considered
1. Should uphold the planning condition to avoid any opportunity for creeping business development.	5.5.

Consultees

Consultee	Comment	Where in the report this is considered
Waltham St. Lawrence Parish Council	<p>The Parish Council STRONGLY OBJECT for these reasons:</p> <p>1. The NPPF of March 2012 postdates the imposition of removal of PDR arising out of 09/01823 decision notice dated 3.11.09 and 11/00651/ENF issued 28.7.11. <i>Para 203 anyway refers to LPAs not to the Inspectorate.</i></p> <p>2. In para 37 of the 2012 Appeal decision the condition was imposed by the Inspector: "<i>for the removal of doubt it is also necessary to impose a condition restricting the use of the barn to uses associated with agriculture</i>".</p> <p>3. Importantly in para 23 of the 2012 Appeal the appellant: "<i>was prepared to accept a condition restricting the use of the barn solely for purposes associated with agriculture</i>" (in order to retain the relocated barn).</p> <p>It is indeed 'necessary', 'relevant' and 'reasonable' to impose this condition in view of its Plough (i.e. agricultural) Lane quiet residential location and the new 'flexible' R uses class where B1 and B8 use would be especially objectionable. In addition, and relevant to a s.73 application, the view from the elevated footpath 13 would be severely compromised in that regard – as it is the tree planting condition on the northern boundary is incomplete after four years.</p>	5.1 – 5.9.

7. APPENDICES TO THIS REPORT

- Appendix A - Site location plan

Documents associated with the application can be viewed at <http://www.rbwm.gov.uk/pam/search.jsp> by entering the application number shown at the top of this report without the suffix letters.

This recommendation is made following careful consideration of all the issues raised through the application process and thorough discussion with the applicants. The Case Officer has sought solutions to these issues where possible to secure a development that improves the economic, social and environmental conditions of the area, in accordance with NPFF.

In this case the issues have been successfully resolved.

8. CONDITIONS IF PERMISSION IS GRANTED

1. No conditions.