

Item 4I **11/00989/FUL**

Case Officer **Mr Matthew Banks**

Ward **Lostock**

Proposal **Section 73 application to remove Conditions 2 (use of building) and 5 (personal permission) attached to planning approval 10/00563/COU.**

Location **Jumps Farm 147 South Road Bretherton Leyland Lancashire**

Applicant **Mr SJ Wignall**

Consultation expiry: 28 December 2011

Application expiry: 5 January 2012

Proposal

1. Section 73 application to remove Conditions 2 (use of building) and 5 (personal permission) attached to planning approval 10/00563/COU.

Recommendation

2. It is recommended that this application is approved subject to conditions.

Main Issues

3. The main issues for consideration in respect of this planning application are:
 - Background information;
 - Principle of the Development;
 - Design and impact on the streetscene;
 - Impact on neighbour amenity;
 - Access and parking;
 - Impact on the Bretherton Conservation Area;

Representations

4. To date, a single letter of objection has been received concerning this application. The points raised in this letter can be summarised as follows:
 - The recently authorised enforcement action at the Council's Development Control Planning Committee on the 13th December 2011 is relevant to the application and concerns the building subject of this application;
 - The development has arrived as a result of planning by stealth;
 - A holistic approach should be taken to regularise the use of the site;
 - If the Council is initiating enforcement action the application should not be determined and should be withdrawn;
 - Building A was re-built as a wood workshop but was never laid out in this way.
 - The wording of both conditions is defective and confused, however the reasons for the conditions are not.
 - If the application is approved, a number of conditions should be imposed to control development of the site, these include:
 - A condition restricting hours of operation and use of Building A;
 - A condition requiring the submission of car parking scheme and landscaping;
 - A condition requiring details of foul drainage;
 - A condition requiring the unity of occupation at Jumps Farm;
 - A condition restricting the use to that which meets the needs of a local business;

Consultations

5. Parish Council – None received.

6. Lancashire County Council (LCC) Highways – No objection.

Assessment

Background information

7. The application site has a lengthy and varied planning history. The site originally comprised a poultry farm, but has evolved over time with many of the original buildings now demolished.
8. The application site now essentially comprises 3 buildings. These include: Building A (used by the applicant as an office for his landscaping business - but is predominately vacant), Building B (used by 'Norris Garden Buildings' as a wood workshop which also benefits from an extant planning permission to be re-built and used permanently as a wood workshop) and Building C (which is used as a workshop in connection with the applicant's landscaping and gardening business).
9. The only building subject of this application is Building A, however, given the nature of operations at the site, the use of the buildings are somewhat interdependent and connected.
10. Historically the development of this site has come about in an ad-hoc manner over a lengthy period, resulting in a detailed planning history and combination of permanent and temporary planning permissions. This uncoordinated approach has resulted in the Council authorising enforcement action concerning a number of issues at the Development Control Planning Committee on the 13th December 2011. However, it is important to note that none of the enforcement matters relate to Building A.
11. A neighbour objection has been received in relation to this application drawing attention to the above enforcement matters highlighting the development of the site is 'planning by stealth'. This neighbour also argues that given the detailed history at the site, a holistic approach should now be adopted to regularise all activity.
12. The Council has noted the above issues and discussed these in detail with the applicant and their agent. The applicant now proposes a coherent and structured approach to developing the site in a bid to appease neighbour tensions and ensure the site maximises its financial potential. The removal of Conditions 2 and 5 are the first stage in this process.
13. The Council is mindful of timescales concerning the above approach, however, the applicant has confirmed in writing that if the current application is approved, three planning applications will be submitted to the Council within 28 days of the decision notice. These would include: (1) an application to allow Building C to be used as a workshop by the current occupiers of Building B (The applicant will also continue to use Building C as a workshop); (2) an application to change the use of Building B back to a store to be used in connection with the applicant's landscape gardening business (which would allow the removal of the unlawful containers on site) and; (3) an application to regularise the existing 'bin stores' which currently contain loose material used in connection with the applicant's landscape gardening business.
14. The applicant is aware that if this deadline is not adhered to then the council will initiate enforcement action.

Principle of the development

15. This application seeks permission to remove Conditions 2 and 5 from planning approval 10/00563/COU.
16. The historic development of the site is one of primary concern for the Council, given how development of the site has evolved over recent years, particularly with discrepancies in information submitted before the Council in past supporting statements.
17. Condition 2 was imposed with planning permission 10/00563/COU in the interests of the amenity of the local residents and to ensure appropriate development of the site. The site has historically developed through an incremental and ad-hoc approach, where some planning

permissions have been sought retrospectively and others determined at appeal.

18. Condition 2 reads:

“The use of building A hereby permitted as an office shall only be used in connection with the use of Building B (permitted as a permanent workshop) and shall not be used in connection with any other use(s) on or off site.

Reason: In the interests of the amenities of local residents and to ensure appropriate development of the site.”

19. Firstly, it is considered that Condition 2 was partly imposed because of discrepancies in information intimated during the course of the application 10/00563/COU which confusingly suggested that Building A would be used in connection with Building B. However, this was not the case and Building A is in fact used in connection with the applicant's landscaping business and Building B is used by separately by 'Norris Garden Buildings'. As such, it is not considered that Condition 2 should have been imposed with planning permission 10/00563/COU and therefore it is reasonable in this case, to allow its removal so that Building A can be occupied and used lawfully as originally intended.

20. With regard to Condition 5, this reads:

21. *“The permission hereby granted shall only endure for the benefit of Mr SJ Wignall only and whist at resident at Jumps Farm, South Road, Bretherton.*

Reason: The application has been permitted to accommodate the needs of Mr Wignall's business only and the letting and or diversification of other businesses within building A could lead to an unacceptable proliferation of development for which the site was not intended.”

22. It is important to note at this point that the change of use of Building A to an office was (to some degree) permitted under the application 10/00563/COU because the applicant stated within their Design and Access Statement that Building A would *“be used solely for the business related to Jumps Farm”* as the admin activity (which was run out of the farmhouse) had outgrown the available space.

23. The Council has questioned this statement and the applicant has responded stating this was the intension at the time of submitting the application, but it was not always the intension that the arrangement would remain this way.

24. Notwithstanding the above, the applicant argues that circumstances have now progressed and if permission is granted to remove Condition 5, this will allow the building to maximise its potential without causing harm to the amenity or character of the area.

25. The applicant argues that the removal of Condition 5 would still allow them to occupy part of the building (to meet their current and future office needs for the landscaping business), but will also allow the remaining vacant portion to be used by a separate client.

26. Building A currently has permission to be used as an office (B1), and in removing Condition 5, it is not considered this will significantly change the nature of the activity within the building as it would remain in a B1 office use. Additionally, in looking at the principle of the development, the use of the building for shared purposes finds support in national and local planning policy.

27. In the case of this application, the application site is within the Green Belt, where Policy DC7A of the Adopted Chorley Borough Local Plan Review promotes the re-use of existing buildings within the Green Belt for commercial, business and employment uses. Also, the removal of Condition 5 will not result in any physical alterations to the building and so it is considered the principle of the development will remain acceptable and not impart any greater harm to the openness of the Green Belt than at present.

28. The use of the building also finds support under Policy EC12.1 in Planning Policy Statement 4 (PPS4) which states:

29. *“re-use of buildings in the countryside for economic development purposes will usually be preferable, but residential conversions may be more appropriate in some locations and for some types of building. In determining planning applications for economic development in rural areas, local planning authorities should:*
30. *(d) approve planning applications for the conversion and re-use of existing buildings in the countryside for economic development, particularly those adjacent or closely related to towns or villages, where the benefits outweigh the harm of: (i) The potential impact on the countryside, landscape and wildlife; (ii) local economic and social needs and opportunities; (iii) settlement patterns and the level of accessibility to service centres, markets and housing; (iv) the need to conserve, or desirability of conserving, heritage assets and; (v) the suitability of the building(s), and of different scales, for re-use recognising that replacement of buildings should be favoured where this would result in a more acceptable and sustainable development than might be achieved through conversion.”*
31. Additionally, the guidance stipulated within PPS4 is consistent with that covered in Planning Policy Statement 7 (PPS7) which supports sustainable development in rural areas.
32. Building A is not within the settlement of Bretherton, however is within close proximity to the settlement boundary. It is considered the building is within a relatively sustainable location within close proximity to the main arterial road running through Bretherton (South Road) which is served by a regular bus service. In addition, the applicant has also undertaken a sequential assessment of the Bretherton Settlement to establish that there are no available, more appropriately sited offices within the Bretherton area that would be suitable for occupation before Building A.
33. It has been acknowledged that an objection letter received from a neighbouring resident states that if Conditions 2 and 5 are removed, a number of new conditions should be imposed to protect the residential amenity of neighbours and to ensure the appropriate use and development of the Jumps Farm site. The suggested conditions include: (1) a restriction on the hours of operation; (2) a condition requiring the submission and approval of a scheme for car parking and landscaping; (3) a condition requiring the submission and approval of foul drainage; (4) a condition which requires the unity of occupation of the Jumps Farm Site and; (5) a condition restricting the use to that which meets the needs of a local business.
34. Firstly, it must be noted that the hours of operation were not restricted with the original application as the use of the building for B1 purposes is one which can be carried out within a residential area without causing detriment to the amenity of that area. It has been acknowledged that the building is likely to be occupied by another business, however, such a business would be B1 orientated and so should fit comfortably in a residential area.
35. As such, it is not considered that removing condition 5 will result in any significantly greater detrimental activity than is currently experienced on site and so an hours of operation condition is not necessary in this case.
36. Secondly, with regard to off-road parking provision, it has been acknowledged the site already has extensive levels of off-road parking space (although none are specifically marked out). However, in removing condition 5 this would in effect enable the applicant to sell the building, rendering it independently occupied by a separate business with no allocated off-road parking. As such, it is considered reasonable and necessary in this case to request further details of off-road parking arrangements for Building A through planning condition before first occupation of the building for shared purposes.
37. With regard to landscaping and maintaining privacy, it must first be noted that the Jumps Farm site (including the farmhouse and Buildings A, B and C) is all within the applicant's ownership.
38. If the scenario arose whereby the applicant chose to sell Building A to allow it to be wholly occupied by a separate business, it is considered the greatest impact would be on the

farmhouse itself. As such, it is not considered a landscaping condition is required to protect residential amenity of the farmhouse as it is considered reasonable to expect the applicant to carry out any alterations or planting to achieve an 'acceptable' neighbour relationship before selling the building. Furthermore, any prospective buyer would also be aware of the situation they were moving into.

39. It is not considered any other landscaping requirements are required to protect or maintain the amenity of the other surrounding neighbouring residents, particularly given the orientation of windows in the building and the nature of the use. It must also be noted that Building A has been the subject of an appeal (ref: 06/00035/FUL) where the Inspector also did not impose such a condition.
40. Thirdly, it has been noted that on the original permission, the applicant stated that foul drainage would be disposed of via the mains sewer. The applicant has been contacted regarding this issue and confirmed that foul water disposal has been connected in this way.
41. Notwithstanding this, the case officer has discussed the matter with the Council's Building Control Team who have confirmed that the implemented drainage arrangement has not yet been inspected or approved.
42. The applicant has been contacted to this effect and has been made aware that drainage inspection is a statutory inspection which must be carried out to the approval of the Building Control Surveyor in full compliance with the Building Regulations 2000 (as amended) and should be inspected and approved before the building is occupied. The applicant has consequently confirmed in writing that they will contact the Council's Building Control Team by the 17th January 2012 to regularise the drainage detail.
43. As such, it is not considered necessary in this case to request further drainage detail when this will be regularised in due course through building control.
44. Lastly, although the historic development of the site is one of primary concern for the Council, it is not considered reasonable to impose conditions which require the unity of occupation of the Jumps Farm Site or a condition restricting the use to that which meets the needs of a local business. This is particularly important in more recent times given the current economic climate and the encouragement within PPS4 to promote diversifying business uses.
45. As such, on balance of the above, it is considered that removing conditions 2 and 5 will not significantly affect the principle of the development (which is supported in national and local planning policy). The development therefore still remains in compliance with PPG2, PPS4, PPS7 and Policies DC1 and DC7A of the Adopted Chorley Borough Local Plan Review.

Design and impact on the streetscene

46. The proposed removal of Conditions 2 and 5 will not result in any external alterations to Building A and so it is not considered the development will have any greater impact on the streetscene than is experienced at present.
47. As such, it is not considered the removal of conditions 2 and 5 will result in any significant detrimental harm to the design and impact on the streetscene.

Impact on neighbour amenity

48. Building A has a lawful use as an office to be used only in connection with the applicant's landscaping business. If conditions 2 and 5 are removed then other parties could occupy the building as well as the applicant.
49. It is therefore appropriate to assess whether that removing conditions 2 and 5 would result in any greater significant detrimental harm to the amenity of the neighbouring residents than is experienced at present.
50. The layout of the building would only reasonably accommodate 2.no tenants, one of which would be the applicant. As such, given the nature of the permitted use (i.e. B1 offices), it is

not considered the increased activity at the site, in such a well insulated building would amount to an increase in noise, disturbance or activity that would result in greater significant detrimental harm to the amenity of the neighbouring occupiers.

51. The Council has noted the reason why conditions 2 and 5 were imposed with the original planning permission which related to protecting the amenity of the neighbouring residents and to prevent proliferation of development at the site. However, it is considered that partially letting Building A will not result in greater significant detrimental harm to the amenity of the neighbouring residents than is currently experienced on site. Furthermore the applicant has confirmed they will retain sufficient office space within the building to satisfy their current and future office needs thereby not resulting in an additional building at the site in the future.
52. Additionally, it must also be noted that the nature of a B1 use is as such that it can be carried out in a residential area without causing detriment to the amenity of the area. As such, it is not considered there will be any significant detrimental harm to the amenity of the neighbouring residents should conditions 2 and 5 be removed.

Access and parking

53. The removal of condition 5 will allow third parties to occupy building A and so this could lead to an increase in vehicular activity and demand for off-road parking at the site.
54. However, the area surrounding the existing buildings already comprises extensive hardstanding which provides sufficient off-road parking provision to accommodate the likely increase in demand. It has been acknowledged that parking space has not been specifically laid out, however, space is available which is sited far enough from neighbouring residents to ensure no undue increase in noise or disturbance will occur.
55. LCC Highways have also been consulted as part of the application and have concluded that regardless of whether building A is used for office purposes by the applicant or an external business, the building has the potential to generate the same level of traffic in which case there are little grounds for highways objection.
56. As such, it is not considered removing conditions 2 or 5 will result in any significant detrimental harm to the safe operation of the highway network. Furthermore, given the existing hardstanding available to accommodate an increase in demand for parking, it is not considered a pre-commencement condition is required to demonstrate off-road parking associated with building A.
57. The development is therefore considered to be in accordance with Policy TR4 of the Adopted Chorley Borough Local Plan Review.

Impact on the Bretherton Conservation Area

58. The removal of Conditions 2 and 5 will not result in any external alterations to building A and so it is not considered the development will have any greater impact on the Designated Heritage Asset that is the Bretherton Conservation Area than is experienced at present.
59. Therefore it is not considered the removal of conditions 2 and 5 will result in any significant detrimental harm to the character of the Bretherton Conservation Area and so the development remains in compliance with Planning Policy Statement 5 (PPS5).

Overall Conclusion

60. On balance of the above, the Section 73 application to remove conditions 2 and 5 is accordingly recommended for approval subject to conditions.

Planning Policies

National Planning Policy

Planning Policy Guidance 2: Green Belts (PPG2)

Planning Policy Statement 4: Economic Development (PPS4)

Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7)

Planning History

The site history of the property is as follows:

Ref: 04/00303/COU **Decision:** WDN **Decision Date:** 14 May 2004
Description: Retrospective application for a change of use of a former poultry cabin (building 'B') to storage in connection with a landscape gardening business, and structural alterations,

Ref: 04/00304/COU **Decision:** WDN **Decision Date:** 14 May 2004
Description: Retrospective application for the change of use of a former poultry farm workshop (building 'C') to a workshop in connection with a landscape gardening business, and structural alterations,

Ref: 04/00370/FUL **Decision:** PERFPP **Decision Date:** 7 June 2004
Description: Retrospective application for excavation of pond and construction of banking,

Ref: 04/00371/FUL **Decision:** PERFPP **Decision Date:** 8 June 2004
Description: Erection of single storey extension to rear,

Ref: 04/00752/COU **Decision:** PERFPP **Decision Date:** 27 October 2004
Description: Retrospective application for a change of use of a former poultry cabin (building 'B') to storage in connection with a landscape gardening business, and structural alterations,

Ref: 04/00753/COU **Decision:** PERFPP **Decision Date:** 27 October 2004
Description: Retrospective application for the change of use of a former poultry farm workshop (building 'C') to a workshop in connection with a landscape gardening business, and structural alterations,

Ref: 05/00603/FUL **Decision:** REFFPP **Decision Date:** 1 August 2005
Description: Relocation of joiners workshop to Building C, (to include a variation of condition No 3 on planning permission 9/95/00760/COU to permit the manufacture of other wood products), and the demolition and rebuilding of Building A for domestic use ancillary to the farm house

Ref: 06/00035/FUL **Decision:** REFFPP **Decision Date:** 7 March 2006
Description: Demolition and rebuild of existing workshop,

Ref: 07/00874/COU **Decision:** PERFPP **Decision Date:** 10 September 2007
Description: Temporary change of use of existing store as workshop during re-building of existing workshop,

Ref: 09/00530/COU **Decision:** WDN **Decision Date:** 3 March 2010
Description: Application for permanent use of previous store to wood workshop (previously permitted on a temporary basis)

Ref: 11/00989/FUL **Decision:** PCO **Decision Date:**
Description: Section 73 application to remove Conditions 2 (use of building) and 5 (personal permission) attached to planning approval 10/00563/COU.

Application Number- 11/00989/FUL

- Section 73 application to remove Conditions 2 (use of building) and 5 (personal permission) attached to planning approval 10/00563/COU.
- Approve subject to conditions.
- 5 January 2012.

**Recommendation: Permit Full Planning Permission
Conditions**

1. The approved plans are:

Stamp-dated on:	DWG No:
07/07/2010	411/12
07/07/2010	411/13

Reason: To define the permission and in the interests of the proper development of the site.

2. Before any development hereby permitted is first brought into the use, full details of the surfacing, drainage and marking out of the car parking and vehicle manoeuvring areas associated with Building A shall have been submitted to and approved in writing by the Local Planning Authority. The car park and vehicle manoeuvring areas shall be provided in accordance with the approved details prior to first occupation of the premises as hereby permitted. The car park and vehicle manoeuvring areas shall not thereafter be used for any purpose other than the parking of and manoeuvring of vehicles.

Reason: To ensure adequate on site provision of car parking and manoeuvring areas and in accordance with Policy No. TR4 of the Adopted Chorley Borough Local Plan Review.

3. The proposed development must be begun not later than three years from the date of this permission.

Reason: Required to be imposed by Section 51 of the Planning and Compulsory Purchase Act 2004.

4. All external facing materials shall match in colour, form and texture to those permitted with the application 06/00035/FUL for the permanent re-build of building A.

Reason: In the interests of the visual amenity of the area in general and the existing building in particular and in accordance with Policy Nos. GN5 & HT7 of the Adopted Chorley Borough Local Plan Review.