

Allerdale Borough Council

Planning Application FUL/2021/0207

Development Panel Report

Reference Number: FUL/2021/0207
Valid Date: 16/08/2021
Location: Land Opposite The Willows, Lonsdale Place, Flimby, Maryport, Cumbria, CA15 8TP
Applicant: Mr M Kirkbride
Proposal: Retrospective consent for the retention of existing agricultural building for the housing of livestock and horses

RECOMMENDATION

Refuse

1. Summary

<u>Issue</u>	<u>Conclusion</u>
Principle of Development	Policy DM6 of the Local Plan supports the principle of the erection of stable buildings in the open countryside subject to the siting, scale, design and external materials respecting and enhancing the rural character of the local area.
Siting, Scale and Design	The scale, siting and materials of this development are considered inappropriate for this rural location. The proposal would introduce an incongruous form and scale of development that would harmfully erode the rural characteristics of the area resulting in significant adverse impact bringing the development in conflict with Policies S4, S33 and DM6 of the Allerdale Local Plan (Part 1), Adopted July 2014.
Amenity	Officers consider the proposed means to dispose of the manure is acceptable in principle and can be controlled via condition so as not to have a detrimental impact on the amenity of the nearby property.

2. Introduction

- 2.1. This site has been the subject of a number of previous planning applications and an Enforcement Notice is in place for the site to seek the removal of the existing unauthorised structures on site.
- 2.2. A previous scheme on this site, ref 2/2018/0471, came before members in January 2019 for the erection of buildings for the stabling of horses and storage. The application was refused in accordance with officer's recommendations on the following grounds:

"The Local Planning Authority consider inadequate information has been submitted to demonstrate the need for both the number of buildings proposed and the scale of the development. The large scale nature of the large modern agricultural style building becomes the dominant feature in this rural open countryside location with particularly visibility from sensitive visual receptors on public rights of way. It neither seeks to respect or enhance the rural character of the area. The proposal is therefore considered to be contrary to policies S4, S33 and DM6 of the Allerdale Local Plan (Part 1), Adopted July 2014."

- 2.3. The members requested that action be pursued in relation to the unauthorised works and the Council served an Enforcement Notice.
- 2.4. The applicant appealed both the refused planning permission and the enforcement notice and the appeals were dismissed and the enforcement notice upheld. The time for compliance with the notice has lapsed. However, an ecological survey by a qualified ecologist has been submitted to the Council that shows bats are potentially roosting in the large modern agricultural building. A further emergency survey was undertaken on the 26 August of this year that witnessed 1 Soprano Pipistrelle bat emerging from the building and recommend a further bat activity survey be carried out between may- August next year in order for a protected species mitigation licence to be obtained from natural England. Given that an additional survey needs to be carried, the Council has not pursued a prosecution against the failure to comply with the Enforcement Notice as this juncture.

3. Proposal

- 3.1. The current application seeks retrospective permission to retain the existing unauthorised large modern agricultural style building that is currently on the site for housing of sheep, cattle and horses and the retention of a steel shipping container. It is important for members to note that the works sought under this application are the same as those referenced in the Enforcement Notice.
- 3.2. The large agricultural building as existing would be 12m x 6m with an eaves and a ridge height of 3.8m and 5.4m respectively. The steel container measures

6.06m x 2.28m, total height 2.26m. Adjacent to the proposed building is a yard area enclosed by 2m high concrete panels. The yard area measures 12m x 12m.

3.3. The Plans for consideration are:-

Pb1 Location Plan

PB2b Block Plan (amendment received 30 September 2021)

PB4 Proposed Elevations (amendment received 30 September 2021)

PB5 Floor Plan (amendment received 4 October 2021)

Photo of steel container (received 30 September 2021)

Photo of Steel Container with measurements (received 4 October 2021)

Land Owned and rented plan

Design and Access Statement, Drainage Statement and Manure Statement (amendment received 4 October 2021)

Landscaping Planting Schedule and Management / Maintenance (received 30 September 2021)

Scoping bat Survey dated 30 October 2020

Scoping Bat Survey dated 1 September 2021

The particulars are available to view via the following link:-

<https://allerdalebc.force.com/pr/s/planning-application/a3X3X000007zLfwUAE/ful20210207>

4. Site

- 4.1. The application site forms an irregular shaped field located in an area of open countryside to the east of Pennygill Road which leads north-eastwards out of the village of Flimby. A dwelling lies to the northwest of the field with a public right of way (PROW) running along the north boundary. This splits into two rights of way to the northeast. Flimby Great Wood (Ancient Woodland) is directly to the east both public rights of ways striking eastwards through it.
- 4.2. The surrounding landscape is characterised by a patchwork of large open and regular shaped pasture fields, bound by mature hedgerows and set against a backdrop of occasional clusters and bands of native woodland. The land rises up from the West Cumbrian coastline to form a series of exposed ridges and valleys that rise gently towards the limestone fringes of the Lakeland Fells to the east. The result being an attractive and largely undeveloped rural landscape interrupted only occasionally by single or small clusters of dwellings and farmsteads.

5. Relevant Planning History

- 5.1. Planning permission was granted under 2/2015/0599 for a timber stables building that measured 9m in length x 4.4m in with a height to eaves of 3m, 3.8m to ridge within the application site. The building was to be located to the front of the site.

- 5.2. A further application 2/2018/0471 sought retrospective planning permission for the retention of a modern agricultural style building to be used to house horses and the erection of a further stable/storage building. Planning permission was refused and enforcement action taken to seek their removal.
- 5.3. The applicant appealed both the refusal of the planning permission 2/2018/0471 and the Enforcement Notice and the appeals were dismissed and the Enforcement Notice upheld.
- 5.4. FUL/2020/0223 Erection of agricultural storage building for the housing of animals and horses. This application sought to relocate the building. This application was on the agenda for the panel meeting on the 6 July 2021 with a recommendation of refusal. However, the applicant withdrew the application prior to the meeting.

6. Representations

Maryport Town Council

- 6.1. Support for the retention of the developed structure, noting that Councillor P Kendall has called in the application & that a site visit be requested held.

ABC Environmental Health

- 6.2. No comment to make.

Public Rights Of Way Officer

- 6.3. Public Footpath 244024 follows an alignment to the north of the side of the proposed development and must not be altered or obstructed before or after the development has been completed. If the footpath is to be temporarily obstructed then a formal temporary closure will be required.

Natural England

- 6.4. No comment to make on this application.

CCC Minerals & Waste

- 6.5. No objections.

Other representations

- 6.6. The application has been advertised by press advert, site notice and neighbour letter.
- 6.7. No representations have been received to date.

7. Environmental Impact Assessment

- 7.1. With regards to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, the development does not fall within Schedule 1 nor 2 and, as such, is not EIA development.

8. Development Plan Policies

Allerdale Local Plan (Part 1) 2014

- 8.1 The following policies are considered relevant:-

S1 Presumption in Favour of Development
S2 Sustainable Development
S3 Spatial Strategy and Growth
S4 Design Principles
S14 Rural Economy
S29 Flood Risk and Surface Water Drainage
S32 Safeguarding amenity
S33 Landscape
S35 Protecting and Enhancing Biodiversity and Geodiversity
DM6 Equestrian and agricultural buildings
DM17 Trees, hedgerows and woodland

Allerdale Local Plan (Part 2)

- 8.2 The site is within the countryside outside the defined settlement boundaries (policy SA2).

9. Other material considerations

National Planning Policy Framework (NPPF) (2021)

- 9.1 Paragraph 218 states that the policies in this Framework are material considerations which should be taken into account in dealing with applications from the day of its publication. Paragraph 219 states that due weight should be given to development plan policies according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

10. Policy weighting

- 10.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate

otherwise. This means that the Allerdale Local Plan (Part 1) 2014 and the Allerdale Borough Local Plan (Part 2) 2020 policies have primacy.

- 10.2 The relevant development policies for this proposal are considered to have a high degree of consistency with the NPPF and full weight is afforded to them. For this proposal, at this juncture, there are no material considerations which would result in a decision not being made in accordance with the development plan.

11. Assessment:

Principle of development

- 11.1. Policy DM6 supports proposals for stables/equestrian activities in the countryside where new development is, where possible, closely related to existing farm buildings or other groups of buildings. If not possible, development should be designed and sited to minimise impact on the landscape setting.
- 11.2. Policies S4 and S33, seek to secure and support development of high quality design that will protect, conserve and where possible, enhance the landscape character and local distinctiveness.
- 11.3. Therefore in considering whether the principle of a building is acceptable members need to consider its siting, design, scale and resultant effect on the character and appearance of the surrounding countryside. The setting on the slope adjacent to ancient woodland and sensitive receptors (unobstructed views from the public right of way to the north) are of particular relevance in this assessment. Of relevance too is that the baseline against which the proposal is considered is not how the site appears in the landscape today (the development is unauthorised) but rather what it looked like before (acknowledging that the Council granted permission for some development on the land).
- 11.4 Members are advised that nowhere in policy DM6 is there a requirement for a need to be justified. However, given the sensitivities of countryside locations in visual and landscape impact terms including this one, it is reasonable when assessing proposals against policy DM6 to establish the need driving the proposal. Supporting paragraph 350 to policy DM6 recognises that equestrian and agricultural developments often require a countryside location. That is not in doubt. However, the same paragraph continues by noting that new buildings can individually or cumulatively have an adverse impact on the rural character and environmental quality of the area.
- 11.5 An evidenced need could be a consideration that weighs in support of such a development when considering landscape and visual impact. This could be about scale and/or location e.g. a building needs to be of a certain size to accommodate specific machinery or a certain size of flock/herd and needs to be in a location close to a specific access or, say, a water supply.
- 11.6 However if, say, a structure is being proposed with no evidenced need for its scale and location and, it's in a sensitive location with harmful landscape and

visual impact, then one could reasonably resist it and challenge why a smaller structure and/or different location could not be proposed to materially lessen the impact. These matters and balance are relevant for members' consideration of this proposal although just because a need has been evidenced for a building and location still does not mean it is acceptable; the landscape and visual impact could still be such that a refusal is justified.

11.7 The applicant has provided the following information in relation the need: -

- a) The applicant owns 70 sheep that he lambs over 3 blocks with the building used for both accommodation and for lambing. The sheep lamb inside and previously were lambed down at the neighbouring farm. An increase in stock at the farm means that they can no longer accommodate the lambing of the applicant's sheep. He sells the lambs store from grass.
- b) 2 calves are purchased each year that he takes to store level then sells.
- c) 4 horses are in the building and 2 foals. The horses are owned by the applicant and he breeds and sells the foals.
- d) The applicant owns 0.64ha of land.
- e) A further 5.6ha of the surrounding land are rented out on an informal rent from the neighbouring farmer, therefore no tenancy agreement.
- f) The enclosed yard area with concrete panels allows the applicant to leave the door open so the animals can be indoors or outdoors, while still in a secure and contained environment.
- g) The livestock is sold through the farm and therefore there is no separate financial information.

11.8 The use of the site has significantly altered from that considered and approved under application 2/2015/0599 from a modest stable building that could only accommodate 2 horses for personal use to a small holding with commercial breeding of the horses. The Council instructed as part of the previous application FUL/2021/0223 ADAS to undertake an independent peer review on the submitted information in relation to the need for the building. As very little of the information has changed this is still considered relevant for this application and the findings include:

- a) **Building Size and Impact.** The proposed building would represent an 82% increase in the footprint of the original approved footprint. They highlight significant concerns due to this increase in size and therefore impact on the open countryside, especially considering that the applicant has not appeared to justify the increase in size compared to the proposal in the original application.
- b) **Annual Rents.** Whilst it is acknowledged that the main yard and immediate land amounting to 0.64 hectares are owned by the applicant, a further 5.67 hectares are rented on the basis of an annual agreement. ADAS highlight that there is no guarantee that this arrangement will continue.
- c) Building upon this, it is noted that various social and economic pressures will influence land owners and the use of their land, particularly when

considering the potential of new land management opportunities that have arisen following the UK leaving the EU. The goodwill on which this agreement is based may very well expire, with the tenure having the potential to be more complex, rather than simply relying on a gentleman's agreement.

- d) When factoring this into this proposal it is noted that, if this annual tenancy was lost, the holding would be substantially reduced; the grazing capacity of the farm would be totally constrained and, therefore, the stocking levels could not be maintained. Overall, the sustainability of the holding would be affected and the space requirements for the animals would potentially be reduced down to that typical of stabling for privately owned horses.
- e) **Grazing Livestock.** The maximum capacity for a good quality grass lay, with adequate fertiliser and rainfall would support 10-12 ewes and lambs per hectare (SAC/2019/20). The grassland states would support 70 ewes and lambs if adequately fertilised. Horses require approximately 0.5 ha per animal, and therefore there would need to be some imported forage to maintain all of the stated livestock.
- f) It should be noted ADAS have not completed a site visit, but have used preliminary investigations using satellite imagery. In August 2020 when the ewes should have been rearing the later lambs, there were a few signs of ewes on the rented land perhaps 16-17 ewes. Given that the area of grassland would be at its maximum capacity, ADAS would like to be informed where the seventy ewes, perhaps similar numbers of lambs, and four horses are grazing during the summer. It would be highly unusual to remove grazing livestock during these summer periods when grass is exhibiting maximum growth.
- g) **Justification for the Buildings.** ADAS would note that it is hard to justify this building in a business capacity. Whilst strictly not mandatory, no financial figures supplied to assess whether the building justifies the cost. On average, 70 ewes would produce a gross margin (before overheads) of £3,780 (£54/ewe av. Performance J.Nix 2021). There is no indication of flock performance from the applicant, but 18 geld ewes (25%) is five times higher than the national average (5%). Similarly rearing two calves would give a gross margin of approximately £110 in total.
- h) It is acknowledged that the Local Planning Policy allows for and supports the expansion and development of rural businesses, but ADAS would be of the opinion that, from the information presented, this is not a business, and the livestock are marketed through "the farm" which is presumably linked in some way to the applicant.

11.9 The ADAS report concludes that this appears to be a hobby for the applicant, with no security of tenure, a poorly performing sheep flock and no financial or physical records to support the application for this larger building. As a direct result of this, ADAS would be of the opinion that the building is not justified, and

that this proposal does not constitute a viable or sustainable rural business development in the open countryside.

- 11.10 A site visit carried out by officers on the 14 June 2021 and 3 September noted that there were no sheep or lambs grazing on the field. The grass was also over grown which lead officers to believe there has been no recent livestock grazing on the adjacent fields. This would question whether the stated livestock levels provided by the applicant is true and further questions the need for a building of this size.

Landscape and Visual Impact

- 11.11 Policies S4 and S33 are particularly relevant in addition to DM6. The site lies within Sub type 5a Ridges and Valleys as designated in the Cumbria Landscape Character Guidance. Key characteristics of this area are: -
- a) A series of ridges and valleys that rises gently toward the limestone fringes of the Lakeland Fells.
 - b) Well managed regular shaped medium to large pasture fields.
 - c) Hedge bound pasture fields dominate, interspersed with native woodland, tree clumps and plantations.
 - d) Scattered farms and linear villages found along ridges.
 - e) Large scale structures generally scarce.
- 11.12 The site, before development, consisted of a rectangular undeveloped pasture field bound by post and wire fencing and set against a woodland backdrop. It is clear that the pre-developed site conditions made a positive contribution to the attractive rural character of the surrounding area, this contribution being clearly visible from the Public Right of Way which runs along the length of the northern boundary of the site. The enjoyment of users of the public right of way to the northwest, north and then northeast is sensitive to development on the site adjacent to its route. This is a public right of way from a populated area (Flimby) into the countryside and, specifically, into ancient woodland. The walks along the public rights of way in the woodland and the approach to it from the single public right of way was, prior to the unauthorised development, a high value sequence of visual experiences (unobstructed views to and from within the woodland) across undeveloped countryside.
- 11.14 Therefore impact needs to be seen in the context that the landscape is one of high sensitivity (ancient woodland and open slopes to it) and sensitive receptors (the public rights of way).
- 11.15 The buildings are to be enclosed by concrete panels to a height of 2m. These are not characteristic of the prevailing landscape character and, given the height which would be above the proposed hedging (hawthorn and Blackthorn mix hedgerow), would be incongruous, significant intrusions into the landscape and result in a high degree of harm. The adverse visual impact from the public right of way receptors would be high.

- 11.16 Whilst stable buildings and equestrian facilities are not uncommon features within a rural context, officers consider the proposal is poorly sited within an open countryside setting, away from any other groupings of buildings, and thereby resulting in a highly visible and stark feature that is at odds with the surrounding landscape character. The massing and harsh concrete panelling compound the impact of the siting. The combination results in a high level of landscape harm and visual impact.
- 11.17 In considering the proposals members should also be mindful of the appeal decision under application 2/2018/0471 which is a material consideration when determining this application. The proposal under consideration at the time was for a cluster of three stable buildings they were to be enclosed by a 2 metre high concrete panelling. This current application under consideration still retains the large agricultural building, a steel shipping container and 2m concrete panel enclosures and therefore is offered considerably weight in the consideration of this application.

11.18 The Planning Inspector considered

“The proposal would introduce an incongruous form and scale of development that would site uncomfortably on the hillside and in doing so would harmfully erode the rural characteristics of the area. Whilst stable buildings and equestrian facilities are not uncommon features within a rural context, I find the proposal to comprise of disproportionate sized buildings that are poorly sited within an open countryside setting, away from any other grouping of buildings, and thereby resulting in a highly visible and stark feature that is at odds with the surrounding landscape character. In this respect, it would not relate well to its surrounding.

I find the large building to the rear of the site to be particularly discordant scale and, along with the harsh concrete panelling and areas of hardstanding, amounting to a visually intrusive and overly dominant form of development that is harmful to the character and appearance of the surrounding countryside. Thus, the proposal will not respect or enhance the rural character of the local area or its landscape setting”.

- 11.19 There is no evidence for the scale of the buildings proposed or its siting which could be weighed against this impact. The balance is, therefore, in officers’ minds, firmly tilted to resisting the proposal due to its conflict with policies S4, S33 and DM6 of the Allerdale Local Plan (Part 1), Adopted July 2014.

Amenity Issues

- 11.20 The applicant is proposing, in line with the 2015 application, that manure/waste will be stored on a trailer parked at the side of the building and once this is full taken away by the farm to be stored in their midden. Whilst officers do not oppose the manner of storage and removal from the site it is considered that the position of the storage needs to be agreed and that it should be removed on a more regular basis. This can be controlled via condition.

Access

- 11.21 The existing access to the field from Pennygill Road along the Bridleway will be utilised. The applicant has land either to the front of the gate or within the field to provide space for parking vehicles. The Highways Authority have previously considered the proposal and providing the stables are for personal use only and not commercial they raised no objection to the proposal

Ecology

- 11.22 Policies S2 and S35 seeks to promote sustainable development whilst protecting and enhancing biodiversity within the plan area.
- 11.23 The applicant has submitted a Scoping Bat Survey that was undertaken on 30 October 2020 that identified there was evidence of bats found at the site and as a consequence they considered an emergence survey and a full habitat assessment of the building and its surrounding is warranted. These surveys should be undertaken in the period May – August.
- 11.24 A further Scoping Bat Survey has been submitted that includes the details of the emergence survey carried out on the 26 August 2021. This found that there was evidence of bats found at the site with 1 Soprano Pipistrelle bat emerged through the open door. The building has an enhanced ecological value as the building is supported by a bat roost. The report recommended that a further bat activity survey is required to be undertaken between May and August if the building is to be lost.
- 11.25 The loss of a bat roost needs to be considered appropriately and in line with Natural England guidance. However, in considering the application given the extended woodland to the rear it is considered that appropriate mitigation measures could be put in place to provide alternative roosting facilities for the single bat identified.

Local Financial Considerations

- 11.26 Having regard to S70 (2) of the Town and Country Planning Act the proposal has no local financial considerations.

12. Conclusions

- 12.1. The principle of a stable on this site is supported by Policy DM6 of the Local Plan (Part 1), with officers previously considering this to be appropriate under application 2/2015/0599.
- 12.2. Whilst stable buildings and equestrian facilities are not uncommon features within a rural context, officers consider the proposal is poorly sited within an open countryside setting, away from any other groupings of buildings, and thereby resulting in a highly visible and stark feature that is at odds with the surrounding landscape character. The massing and harsh concrete panelling compound the

impact of the siting. The combination results in a high level of landscape harm and visual impact. There is no evidence for the scale of the building proposed or its siting which could be weighed against this impact. The balance is, therefore, in officers' minds, firmly tilted to resisting the proposal due to its conflict with policies S4, S33 and DM6 of the Allerdale Local Plan (Part 1), Adopted July 2014.

- 12.3. The identified bat roost within the unauthorised building would not overcome the harm identified with regards to the poorly sited unauthorised building within the open countryside setting and the landscape impacts.
- 12.4 There is accordance with other development plan policies, for example S32 in relation to residential amenity (with suitable conditions applied). However, the degree of conflict with policies S4, S33 and DM6 is such that, on balance, the proposal should be refused.

RECOMMENDATION

REFUSE PERMISSION AND PURSUE LEGAL PROCEEDINGS UNDER THE EXISTING ENFORCEMENT NOTICE (SUBJECT TO COMPLIANCE WITH THE RESEPECTIVE LICENCE REQUIREMENTS RELATING TO THE BATS AT THE SITE IN LINE WITH NATURAL ENGLAND GUIDANCE)

1. This open countryside setting to the ancient woodland is a landscape sensitive to change. There are also sensitive visual receptors in the form of the public rights of way which provide views of this landscape and the site. The modern building by reasons of its scale, siting and external materials and finish will become the dominant, incongruous feature in this rural open countryside location with particularly visibility from the public rights of way. It neither seeks to respect nor enhances the rural character of the area and there is a significant and overriding harm to the landscape and a high degree of adverse visual impact. The proposal is therefore considered to be contrary to Policy S4, S14, S33 and DM6 of the Allerdale Local Plan (Part 1), Adopted July 2014.

