

**6. S73 APPLICATION – REMOVAL OF CONDITION 5 AND 7 ON APPEAL T/APP/L1046/A/87/07162/P2 AT QUARTERS FARM, BUXO PLAS MANUFACTURING LTD, QUARTERS LANE, HAZLEBADGE (NP/DDD/0719/0761, SPW)**

**APPLICANT: MR STEPHEN MYCOCK**

**Summary**

The applicants are seeking removal of:

- the personal restrictions on the existing permissions
- the requirement to remove the buildings and reinstate the land if the use ceases. The proposal is considered against the policies of the development plan and any other material considerations in the body of this report and recommended for approval, subject to conditions.

**Site and Surroundings**

1. Quarters Farm lies in the open countryside to the east of the B6049 1.6km south of Bradwell and 4.8km north of Tideswell. Originally a working farm, the holding comprises of a detached farmhouse, traditional outbuildings, a large range of modern portal framed buildings laid in a courtyard arrangement and approximately 46.36 hectares of land approximately half of which is steeply sloping rough grazing land. An enforcement case remains active in relation to an unauthorised dwelling at the site.
2. The farm lies in the bottom of a dry valley dominated by Durham Edge, the edge below the Camphill gliding airfield, and Bradwell Edge to the west.
3. A small rise to the west of the farmstead screens it from most views from the public highway. The site is prominent in views from Tophole Road to the north-west and from public footpaths in the area one of which runs up the access lane and along the western edge of the site.
4. The site is accessed via a narrow 400m long tarmac access track which joins the B6049 on the outside of a sharp bend. This access serves the application site, the adjacent farmhouse and two bungalows which lie immediately to the north of the site.
5. Buxoplas is a local company established by the applicant's family. It produces high quality plastic extrusion products for a variety of industries both nationally and internationally. The site is based on a typical Peak District farm, with a mixture of modern farm sheds and traditional limestone buildings. The use was established in the western most building following a successful planning appeal in 1987. The appeal limited the business use to this one single building and contained other restrictive conditions designed to ensure that the existing farm holding remained the dominant land use.
6. Subsequently, however the Buxoplas business expanded into the other farm buildings in the complex to such an extent that this is now the sole base for the business. For the last decade the farmland has been let to another farmer. The business has operated from the site for approximately 30 years and a subsequent Certificate of Lawfulness was issued for the other buildings which are used for purposes ancillary to the plastic extrusions business.
7. For the purposes of the Development Plan the site is clearly outside any designated settlement boundary.

### **Proposal**

8. The proposal is to remove the personal ties and requirements to reinstate the land. To achieve this the applicants have applied to remove the relevant conditions (over two planning consents via two separate S73 applications) and vary the 2014 S106 legal agreement.
9. This application specifically relates to the 1988 Appeal upheld against the Authority's refusal of planning application NP/WED/187/5.
10. The proposal is to remove conditions 5 and 7 of the appeal decision which reads as follows –
  - a. *5. The use hereby permitted shall be carried on only by Mr James Mycock, Mr Stephen Mycock or Mr Raymond Mycock or their employees.*
  - b. *7. The extension hereby permitted shall be removed and the existing building and surrounding land shall be restored to their former condition if the use hereby permitted ceases.*
11. The other planning application; ref NP/DDD/0719/0755, has been submitted at the same time as this one and seeks to vary a 2014 permission for extension to the business premises by removing planning conditions and modifying the S106 which together have similar effect. Whilst they are related and much of the same considerations are made, each application needs to be determined on its individual merits.

### **RECOMMENDATION:**

12. That the application be **APPROVED** subject to the following conditions and/or modifications.
  1. The use hereby permitted shall be restricted to the building and the extension hereby approved and to no other building in the Quarters Farm farmstead group.
  2. There shall be no external storage of materials or goods in connection with the use hereby approved.
  3. The building and its extension shall be used for the development, production and storage of extruded plastic tubing and for no other purposes. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), the use shall be limited to that specified in this condition and for no other purposes.
  4. Any new electricity supply cable to the building or extension hereby approved shall be provided underground.
  5. The use hereby permitted shall only be conducted between 6am and 8pm on weekdays and 8am and 6pm on Saturdays and at no time at all on Sundays, Bank or Public Holidays.

### **Key Issues**

13. Whether the planning conditions are still necessary and meet the other relevant tests in the NPPF.
14. Whether the conditions are required by current Development Plan policies.

### **History**

1987 – WED0187005 – Extension to and change of use of agricultural building for light industrial use. Refused but subsequently granted on appeal. Planning conditions included that the use was personal to the applicants, Stephen and Raymond Mycock, and that the extension permitted would be removed if the use permitted ceased.

1989 – WED0289096 – Replacement of porch/utility room. Granted with conditions.

1989 – WED1189641 – Erection of offices and toilets. Granted with conditions.

2006 – NP/DDD/0506/0440 – Use of the building for industrial storage, ancillary to existing approved use. Withdrawn

2006 – NP/DDD/0706/0673 – Lawful development certification for an existing use. The use of buildings for purposes ancillary to the plastics extrusion business in contravention of conditions no 2 (NP/WED/187/5) and the use of yard areas as above. Granted.

2007 – NP/DDD/1206/1162 – Extension of existing building for industrial use. Granted with conditions.

2007 – NP/DDD/0707/0617 – Extension of existing building for industrial use. Revised scheme. Granted with conditions.

2008 – NP/DDD/0408/0289 – Erection of office, including demolition of existing building. Granted with conditions.

2012 – NP/DDD/0812/0834 – Extension to existing factory unit. Granted with conditions.

2014 – NP/DDD/0613/0542 – Contrary to officer's recommendation planning permission was granted for the extension to an existing manufacturing building. 85m x 18-30m wide. This was granted subject to a S106 legal agreement, the one which is now sought to be varied. The minutes of that meeting record that the purposes of the S106 was to tie the extension to existing buildings on the site and the adjoining 115 acres of farmland. The minutes do not record the need to remove the building when no longer required nor that the permission should be personal.

2016 – Enforcement enquiry in relation to an unauthorised dwelling. Quarters Cottage. Enforcement file 16/0165.

2019 – Pre application advice. The applicant's summary of that meeting explains they intend to incorporate the business and allow for succession planning therefore they need to remove the personal ties and the reinstatement conditions. The reinstatement conditions were explained to create a theoretical liability for the business. Buxoplas are content to keep restrictions which require the factory and the wider farmland to be kept in common ownership and also content to keep the restrictions which require the buildings only to be used for

plastics extrusion. The note of the meeting explains that the Authority accepts the principle of removal of the personal tie and the removal of the reinstatement requirements. Also reminded that conditions 8, 9 & 12 of the 2014 permission still remain to be discharged. Also the recent unauthorised residential conversion was queried, but agreed that this is a separate matter.

### **Consultations**

Derbyshire County Council (Highway Authority) - No objections.

Derbyshire Dales District Council – No response to date.

15. Hazlebadge Parish Meeting - We refer to the following applications NP/DDD/0719/0755, NP/DDD/0613/0542 and NP/DDD/0719/0761. As Parish Council we ask for the following stipulations to be met \*stipulation remains condition of names and successors" and NOT BUXOPLAS or name of the business - reason name or business could be sold. \* Condition 7 & 10 NOT to be removed as detrimental to property namely QUARTERS FARM for the following reasons - Custodians of QUARTERS FARM which has historical value and has impact on future generations of NOT restoring as previously agreed to former "QUARTERS FARM" this would also impact on the nature and conservation of this land which has always been agricultural farmland \*Breaching of Planning Section 171A of the town and planning ACT 1990 namely non-compliance of Landscaping Conditions not met on application NP DDD 0613 0542 issued 4Mar14 \*impact of increased vehicular access to the business with additional traffic generation and impact on road safety this is down a public footpath. Please note all of above.

### **Representations**

16. One representation has been received which objects to the scheme. They object to the removal of condition 7 on the basis that if the family decide eventually to dispose of the business with the existing structure intact, then this would allow someone else to run a potentially unsuitable business from these premises. They do recognise any change of use would require separate planning consent but nonetheless the removal of condition 7 does to an extent partly facilitates this.
17. They have no objection if condition 5 is suitably revised/varied either naming the individual successors or referring to them as their heirs or successors. Obviously, if that condition simply referred to the owners of Buxoplas Ltd that would not offer any protection if the business subsequently passed to an unconnected party as they could simply acquire the shares and change the operation to suit their own needs.

### **Main Policies**

18. National Park designation is the highest level of landscape designation in the UK. The Environment Act 1995 sets out two statutory purposes for national parks in England and Wales:

Conserve and enhance the natural beauty, wildlife and cultural heritage

Promote opportunities for the understanding and enjoyment of the special qualities of national parks by the public

When national parks carry out these purposes they also have the duty to:

Seek to foster the economic and social well-being of local communities within the national parks.

19. Relevant Core Strategy policies: GSP1, GSP2, GSP3, GSP4, DS1, L1 & E2.
20. Relevant Local Plan policies: DMC3, DME2, DME5, DME7, DME8, DMT5.

#### National Planning Policy Framework

21. The National Planning Policy Framework (NPPF) was published on 27 March 2012 and replaced a significant proportion of central government planning policy with immediate effect, the revised version was published in 2019. The Government's intention is that the document should be considered as a material consideration and carry particular weight where a development plan is absent, silent or relevant policies are out of date. In the National Park the development plan comprises the Authority's Core Strategy 2011 and the Development Management Policies 2019. Policies in the Development Plan provide a clear starting point consistent with the National Park's statutory purposes for the determination of this application. It is considered that in this case there is no significant conflict between prevailing policies in the Development Plan and more recent Government guidance in the NPPF.
22. Para 115 of the NPPF states that 'great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. The conservation of wildlife and cultural heritage are important considerations in all these areas, and should be given great weight in National Parks and the Broads.'
23. Para 55 of the NPPF explains that - Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.

#### Peak District National Park Core Strategy

24. Policy GSP1 sets out the broad strategy for achieving the National Park's objectives having regard to the Sandford Principle, (that is, where there are conflicting desired outcomes in achieving national park purposes, greater priority must be given to the conservation of the natural beauty, wildlife and cultural heritage of the area, even at the cost of socio-economic benefits). GPS1 also sets out the need for sustainable development and to avoid major development unless it is essential, and the need to mitigate localised harm where essential major development is allowed.
25. Policy GSP3 sets out development management principles and states that all development must respect, conserve and enhance all valued characteristics of the site and buildings, paying particular attention to, amongst other elements, impact on the character and setting of buildings, scale of the development appropriate to the character and appearance of the National Park, design in accordance with the National Park Authority Design Guide and impact on living conditions of communities.
26. GSP4: Planning conditions and legal agreements
  - i. To aid the achievement of its spatial outcomes, the National Park Authority will consider the contribution that a development can make directly and/or to its setting, including, where consistent with government guidance, using planning conditions and planning obligations.

27. Policy L1 identifies that development must conserve and enhance valued landscape character and valued characteristics, and other than in exceptional circumstances, proposals in the Natural Zone will not be permitted.

28. E2: Businesses in the countryside -

a. Proposals for business development in the countryside outside the Natural Zone and the named settlements in policy DS1, must take account of the following principles:

A. Businesses should be located in existing traditional buildings of historic or vernacular merit in smaller settlements, on farmsteads, and in groups of buildings in sustainable locations. However where no suitable traditional building exists, the reuse of modern buildings may be acceptable provided that there is no scope for further enhancement through a more appropriate replacement building.

ii. On farmsteads, or groups of estate buildings, small scale business development will be permitted provided that it supports an existing agricultural or other primary business responsible for estate or land management. The primary business must retain ownership and control of the site and building, to ensure that income will be returned to appropriate management of the landscape.

iii. Business use in an isolated existing or new building in the open countryside will not be permitted.

iv. Proposals to accommodate growth and intensification of existing businesses will be considered carefully in terms of their impact on the appearance and character of landscapes.

v. Ancillary retail operations must be small scale and principally offering for sale goods which are produced at the premises (see also policy HC5).

Beyond this policy and policies RT1, RT2 and RT3, there is no scope for setting up new businesses in the countryside.

#### Development Management Policies

29. DME2 Farm diversification

A. Development will be permitted if there is clear evidence that the new business use will remain ancillary to the agricultural operation of the farm business, meaning that the new business use is a subsidiary or secondary use or operation associated with the agricultural unit.

B. New buildings may be permitted if the proposed development cannot be appropriately located in existing buildings of cultural heritage significance, or in other buildings which remain appropriate within the farm building group.

C. Development will be permitted to remove a stand-alone building and replace it with a new building within the building group provided the scale, massing and use of the new building is appropriate, it respects the historic form and character of the building group, and the existing building has no cultural heritage significance.

D. New or expanded buildings for non-farming uses that generate income to support the farm business will be permitted provided there is no net harm to any valued

characteristics of the building group or valued landscape character as evidenced by the Landscape Strategy and Action Plan.

- E. Where proposals for farm diversification are otherwise acceptable, the Authority will consider removing permitted development rights to limit the range of uses permissible, where to do so would be necessary, reasonable and consistent with national policy. (This policy does not apply to buildings justified for agricultural purposes, which, either through the prior notification procedure or a planning application, are legitimate forms of development on farms).
30. DME5 Use Class B1 employment in the countryside outside Core Strategy policy DS1 settlements
- A. Planning permission for a Use Class B1 employment use in an existing building will be granted provided that any adverse effect on a building with cultural heritage significance, and on the valued characteristics and amenity of the area can be mitigated including, but not exclusively, by the application of the following criteria:
- (i) restriction to the specific activity applied for; and
  - (ii) a specified and agreed scale, intensity and type of activity, including vehicular movements and hours of operation; and
  - (iii) a specified and agreed arrangement of parking and/or storage of vehicles, equipment and materials.
- B. For the particular use permitted, and where necessary and appropriate:
- (i) permitted development rights (particularly for further buildings or structures) are removed; and/or
  - (ii) permission is time limited for a temporary period of (usually) 2 years; and/or
  - (iii) in the case of personal permissions, the permission is restricted to the personal benefit of the occupant of the building only.
- C. If any combination of these mechanisms proves to be ineffective in practice, a further permission will not be granted.
31. DME7 - Expansion of existing industrial and business development not involving farm diversification.
- B. Outside Core Strategy policy DS1 settlements, expansion of existing industrial and business development will only be permitted that:
- (i) it is of a modest scale in relation to the existing activity and/or buildings; and
  - (ii) the scale and type of development can be accommodated without adversely affecting the residential amenity and valued characteristics of the area or traffic safety and circulation;

- (iii) it does not adversely affect, and wherever possible, secures the enhancement of the site as well as the future management of the valued characteristics of the site and adjoining land; and
  - (iv) proper consideration has been given to the possibilities of conserving and enhancing landscape character by using, modifying or extending existing buildings.
- C. In all cases, the impacts on residential amenity and valued characteristics from operating hours, lighting and noise will be considered.

32. DME8 - Design, layout and neighbourliness of employment sites including haulage depots

- i. Where development for employment purposes is acceptable in principle, it will only be permitted where every practicable means is used to minimise any adverse effects on the valued characteristics and amenity of the surrounding area. Particular attention will be given to:
    - 1. visibility from vantage points; and
    - 2. site access, vehicular circulation and parking; and
    - 3. site layout and use of open space surrounding buildings; and
    - 4. storage of vehicles or other equipment; and landscaping and other screening, and whether, in the landscape proposed, it is an appropriate method to mitigate adverse impact on the landscape; and
  - (vi) noise and proposed times of operation.
- B. Where necessary, planning conditions will restrict future growth and intensity of the activities on site.

### **Assessment**

33. Development Management Policy DME2 relates to farm diversification. While this business started out as farm diversification, it has expanded into the surrounding buildings. The expanded use is now lawful following the grant of the Lawful Development Certificate in 2006. The scale of the business no longer represents a form of farm diversification and the surrounding land is rented out to another agricultural enterprise. However, the site retains common ownership of the surrounding land, and this is already controlled by the S106 legal agreement associated with the planning permission granted in 2014 for extension to the premises and which links to with the requirements of DME7. The policy consideration of DME2 E to remove permitted development rights remains applicable to limit the use as approved in 1988, and ensures that the use operating from the site is compatible with its open countryside location which could potentially be harmed by other business uses.
34. It will therefore be necessary to remove permitted development rights which would allow the change of use to other business uses. The condition is also required because there are currently permitted development rights for light industrial units to change to dwellings (subject to criteria) and at this location and within these types of buildings, such development would be wholly contrary to the policies of the Development Plan.
35. Policy DME5 relates to B1 uses in the countryside outside of settlements. It is permissive of such proposals in existing buildings, subject to the criteria of the policy. In particular the policy requirement of DME5A (i) to restrict the use to the specific activity applied for, is relevant to this case and consistent with previous decisions. So is (ii) to control hours of operation and (iii) for no external storage of materials or goods. These requirements are



also considered to be consistent with DME8, which together with GSP3 and DMC3 also require appropriate landscaping and protect amenity and the valued characteristics of the area.

36. It is noted that on the 1988 permission there was no control over the hours of operation but it has been introduced on the site via the 2014 permission. Given the extent that the business has grown it is considered reasonable and necessary to apply it to this s73 application as such restrictions are necessary to ensure the proposal is compatible with its surroundings, including the general amenity and tranquillity of the area and the amenity of nearby residential properties.
37. The 1988 and 2014 planning permissions allow only a B1 use, despite plastic extrusion being normally a B2 general industry use. In 1988 however, when granting the appeal, the application was for a light industrial use and the inspector used planning conditions specifying that the extension shall be used for the development, production and storage of extruded microwall plastic tubing and for no other purposes (including any other purposes in Class B1 of the schedule to the Town and country planning) use classes order 1987), or in any provision equivalent to that class in any statutory instrument revoking and re-enacting that order. This specific type of plastic extrusion (microwall plastic tubing) carried out on the site is more akin to a B1 use in the way it operates and has been controlled this way since it was approved in 1988, the inspector noting that the operation of the plastics extrusion business were quiet and involved no offensive smells or waste products.
38. In the 1988 appeal decision those restrictions were imposed by way of planning conditions. The resolution from committee for the 2014 decision was to require a legal agreement tying the extension to existing buildings on the site and the adjoining 115 acres of farmland and a list of conditions.
39. The planning inspector considered the proposal at that time would be both contrary to adopted policies and cause harm to landscape as well as local amenity and highway safety from increased traffic movements. Whilst this would normally warrant refusal the Inspector concluded an exceptional approval was justified based on the very special circumstances in the case which were centred upon the personal technical expertise of the applicants. This supported the applicants need to personally supervise the process which therefore had to be located in close proximity to the Tideswell base. In the absence of any other available buildings to meet the special need, an extension at Quarters farm was justified despite the harm to landscape. For these reasons the Inspector concluded it to be reasonable for the use to be personal and the extension to be removed when no longer required, conditions which the appellant's had indicated they were prepared to accept.
40. Having considered the relevant policies and the way the business has expanded, we conclude that the scale of the operation is no longer one that could justifiably be limited to being personal. It has clearly grown beyond farm diversification, so there is no policy basis to limit the use to being personal only.

It is considered that adequate control of the site in planning terms can be ensured by limiting the use and retaining the site and surrounding land in common ownership (common ownership by the existing 2014 S106). Furthermore the use of a personal condition would not meet current guidance in the NPPG. Which explains the following for personal conditions (015) –

- a. Planning permission usually runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because

of who would benefit from the permission. For example, conditions limiting benefits to a particular class of people, such as new residential accommodation in the open countryside for agricultural or forestry workers, may be justified on the grounds that an applicant has successfully demonstrated an exceptional need.

- b. A condition limiting the benefit of the permission to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company.
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- 41. Officers consider that both conditions 5 and 7 of the permission can be removed as requested. It will not increase the impact of the site nor cause any additional amenity issues. Conditions which limit the use to the specific type of plastic extrusion and the existing S106 obligation that the buildings and surrounding land remain in common ownership are considered to provide sufficient planning control over the site to not require conditions 5 and 7. Given that the personal nature of the existing permission is not necessary and therefore it would not be reasonable to continue to apply this, there is no need for the condition which requires that the land be reinstated as the use will not cease at the point that a named person ceases to have an interest in the development.
  - 42. It will still be necessary for the existing S106 legal agreement to keep the buildings and surrounding land in common ownership and this is dealt with by the following report on the agenda.
  - 43. The public representations are noted. In particular there is a concern raised that removing condition 7 may enable another unsuitable business to start up from the site. However, although officers recognise that it would enable another business to operate from the site, the suggested conditions would still limit the use to the specific type of plastic extrusion so anything other than this would need a further planning application, which could be dealt with on its merits.
  - 44. The parish meeting's comments are also noted. In particular their comments about not making the permission attached to the business are noted, however the application is submitted to remove the personal tie altogether and for the reasons explained above is found to be acceptable. It is not necessary to limit the use to a person or business as adequate control can be achieved on the site by limiting the use to that specifically being granted and ensuring common ownership of the buildings and surrounding land via the existing (or varied) S106. Officers have found that it is not necessary to require the buildings to be removed when no longer required for the reasons set out above and the proposal is not considered to increase traffic movements at the site. It is noted that the highways authority have not objected to the scheme. The parish council do raise an important issue about the landscaping, there are outstanding conditions which relate to landscaping on the site, therefore, the planning condition would need to be restated if this application were approved.

### **Conclusion**

- 45. It is therefore considered to be acceptable to remove the personal nature of the permission by deleting condition 5 and to remove the reinstatement requirements by deleting condition 7.

46. The other conditions as set out above have been restated where they still serve a purpose and have been updated as necessary.

**47. Human Rights**

48. Any human rights issues have been considered and addressed in the preparation of this report.

**49. List of Background Papers (not previously published)**

50. Nil

51. Report Author – Steven Wigglesworth, Planner.