

No.2	APPLICATION NO.	2018/0721/FUL
	LOCATION	Gibbons Barn Plex Lane Halsall Ormskirk Lancashire L39 7JZ
	PROPOSAL	1.8 metre high timber fence to rear boundary.
	APPLICANT	Kirsty Breakell
	WARD	Halsall
	PARISH	Halsall
	TARGET DATE	17th September 2018

1.0 DEFERRAL

1.1 The application was initially considered at Planning Committee on 18 October 2018 but deferred to consider amendments to the scheme.

2.0 SUMMARY

2.1 The applicant has decided to reduce the length of the fence subject of the application. Although the full length of the fence remains in place the application relates only to that part of the boundary lying immediately west of the barn that connects to its north-western corner then turns in a roughly north-south orientation (approx. 21 metres in length). In planning terms the development is still considered to result in harm to the Green Belt and be inappropriate in its setting and therefore conflicts with Policies GN1, GN3 and EN4 in the West Lancashire Local Plan, the NPPF and Design Guide Supplementary Planning Document.

3.0 RECOMMENDATION: REFUSE

4.0 THE SITE

4.1 The site consists of a traditional brick and slate former agricultural barn converted to residential accommodation. Vehicular access is provided to the immediate south of the barn with associated residential garden area to the west. A former orchard area exists to the south. The building forms part of a cluster of former farm buildings to the western side of Plex Lane.

5.0 THE PROPOSAL

5.1 The application seeks the retention of approx. 21 metres of 1.8 metre high horizontally-slatted fence located to the rear (west) of the barn along a similar line to the demise of the residential curtilage defined in planning permission 1995/0011.

6.0 PREVIOUS RELEVANT DECISIONS

6.1 1995/0011 – GRANTED (16.03.1995) Change of use of office to dwelling including elevational changes.

6.2 1991/0624 – GRANTED (31.10.1991) Conversion of Barn into offices; associated car parking and alterations to access.

Adjacent property at Gibbon's Cottage

- 6.3 1995/0250 – GRANTED (12.05.95) Erection of conservatory at rear and new boundary wall/post and panelled fence, installation of septic tank, including biodisc effluent treatment system and soakaway. Siting of propane tank.

Adjacent property at Gibbon's Farm

- 6.4 2013/0842/LDP – REFUSED (15.10.2013) Certificate of Lawfulness - Proposed new security wall to abut existing boundary wall. Allowed on appeal.

7.0 CONSULTEE RESPONSES

- 7.1 None applicable.

8.0 OTHER REPRESENTATIONS

- 8.1 One letter has been received from an immediate neighbour objecting on the following grounds:

Scale disproportionate to surrounding development
Prominent feature
Inappropriate to rural setting
Fire risk
Bad neighbour development
Not in accordance with the Local Plan
In conflict with planning conditions attached to the property
Other works have taken place on the site
Development will exacerbate local surface water flooding issues
No consultation before works took place

- 8.2 A rebuttal to the objection of the neighbouring residents has been received from the applicant highlighting the following:

The fence would not impede fire escape given the nature of other boundaries to the neighbour's property.
Excavations in the orchard area are to complete remedial drainage works.
No trees have been removed from the site.
Statement supports 'privacy' argument.
Impact of recent development at the Barn no more likely to adversely impact flood risk in the locality than the developments at the Gibbons Farm site.
Gibbons Barn has never flooded
No objection to a physical boundary has been included - objection appears to be concern over retrospective nature.
Objection with respect to the materials used is inconsistent with objectors own actions
Hedging was suggested by the objector however, he confirms the area was cobbled and as such no hedging could be planted/grown as the ground is solid.
Points of objection not considered valid or consistent with development at Gibbon's Farm.

9.0 SUPPORTING INFORMATION

- 9.1 The applicant previously provided a statement in support of the retention of the fence raising the following issues/benefits:

Provides security and prevents unauthorised access

Is similar to other means of enclosure in the immediate vicinity and beyond; consistency of decision making should be reviewed.

Views of the fence are limited or obscured

Provides mutual privacy benefit between neighbouring residents

An identical means of enclosure could be erected without planning permission by the neighbouring occupiers

Preventing retention of the fence would contravene Article 8 of the Human Rights Act

The fence is not a building and should not be assessed as such.

The barn is not a non-designated heritage asset and Policy EN4 is not relevant.

No reference is given to safety as a material consideration.

A hedge could not be planted in the existing ground as it is solid and in any case would take between 5 and 10 years to grow, however, some softening landscaping has been carried out and the fence will weather down to a similar appearance as the nearby stable.

Concerns are expressed in respect to the disparity arising from adjacent properties having permitted development rights removed or retained.

- 9.2 The revised application is submitted on the basis that the length of the fence adjacent to the area previously identified as the orchard (lying to the south-west of the barn) is claimed as permitted development.

10.0 RELEVANT PLANNING POLICIES

- 10.1 The National Planning Policy Framework (NPPF) 2018 and the West Lancashire Local Plan 2012-2027 DPD provide the policy framework against which the development proposals will be assessed.

- 10.2 The site is located within the Green Belt as designated in the West Lancashire Local Plan 2012-2027 DPD (WLLP) and a Mineral Safeguarding Area as defined in the Lancashire Site Allocation and Development Management Policies Local Plan.

- 10.3 Relevant Local Plan Policies:

GN1 – Settlement Boundaries

GN3 – Criteria for Sustainable Development

EN2 – Preserving and Enhancing West Lancashire's Natural Environment

EN4 – Preserving and Enhancing West Lancashire's Cultural and Historical Assets

Supplementary Planning Document, Design Guide (Jan 2008)

Supplementary Planning Document, Development in the Green Belt (October 2015)

11.0 OBSERVATIONS OF DIRECTOR OF DEVELOPMENT AND REGENERATION

Background

- 11.1 The development that has taken place would generally be permitted to a height of 2.0 metres under the provisions of the (now) Town and Country Planning (General Permitted Development) (England) Order 2015; however, as a converted rural building, these rights were removed from the property to protect the Green Belt locality and the heritage value of the former traditional agricultural barn. This approach is generally driven by planning policy requirements at the time of conversion and, indeed, is not an uncommon approach when considering equivalent proposals under current national and local planning policy requirements.

- 11.2 Of the group of three residential properties here the application site and Gibbon's Cottage (also a conversion) have the majority of their permitted development rights removed. The original farmhouse retains its rights under the Order.

- 11.3 Notwithstanding that part of the existing fence lies outside the residential curtilage of the barn and therefore outside the area of restricted permitted development rights, the entire fence is considered unauthorised in planning terms as it was constructed as, and forms, a single entity. This is consistent with the established principle in *Garland v Minister of Housing and Local Government* [1968]. The effect of granting permission for the length lying within the domestic curtilage established for the residential conversion in 1995 leads to questions about the legal status of the remaining part of the fence outside the 1995 curtilage. However, it should be clear that the following paragraphs relate only to the length of fence applied for (21 metres or thereabouts).

Assessment

- 11.4 Planning condition 4 on the approval to convert the building to a residential unit removed some permitted development rights including the erection of means of enclosure at the site. The reason for that restriction is stated as: *The character and location of the property are such that the Local Planning Authority wish to exercise maximum control over future development.* For the reasons set out below I am satisfied that that restriction meets the current tests for planning conditions set out at para 55 of the NPPF and therefore its effect remains valid.

Principle of Development – Green Belt

- 11.5 For the purposes of the Green Belt assessment the NPPF does not define “building”, but section 336 of the 1990 Act defines the term as including “any structure or erection”. Therefore, consistent with the approach of the Planning Inspectorate in a recent appeal case, the Council has assessed the fence as a building. Policy GN1 in the WLLP states that proposals in the Green Belt will be assessed against national policy and any relevant Local Plan policies. The NPPF sets out the types of appropriate development in the Green Belt at paras. 145 and 146. The erection of new buildings in the Green Belt is considered inappropriate except for specified exemptions. The proposal would not fall within any of these categories and therefore is considered inappropriate development in the Green Belt.
- 11.6 The applicant suggests that under the terms of Para. 145 the development could consequently be construed as an extension to the existing building and therefore the relevant test would be whether it is disproportionate to the original dwelling. As a distinct structure that does not serve the function of the existing barn (to provide habitable accommodation) I consider this interpretation as an 'extension' would not be credible in planning terms.
- 11.7 Inappropriate development in the Green Belt is harmful by definition and should not be approved except in very special circumstances. The NPPF defines that *very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by any other considerations.* It also advises that any harm to the Green Belt should be afforded *substantial* weight.
- 11.8 In addition to the harm arising from inappropriateness, the presence of the fence will result in a loss of openness (generally defined as the absence of built form and development as opposed to any visual matter). In terms of the visual impact, para. 141 requires, inter alia, that local planning authorities plan positively to retain and enhance landscapes and visual amenity of the Green Belt. This is assessed in the following paragraphs.

Design and Appearance

- 11.9 Policy GN3 of the West Lancashire Local Plan DPD 2012-2027 states that proposals for development should be of high quality design and have regard to visual amenity and complement or enhance any attractive attributes and/or local distinctiveness within its surroundings through sensitive design, including appropriate boundary treatment. The Design Guide SPD provides specific guidance in relation to boundary treatment. This states that: *Where new boundary walls are required, their design should match those used elsewhere locally and in particular comprise materials and detailing which relate to the context of the site.*
- 11.10 The principal views of the fence are obtainable from Plex Lane, though these are to some extent obscured by intervening hedging and the barn itself. The dark-coloured timber of the fencing is not particularly intrusive however, the lighter treatment on the outer side (to Gibbons Farm) is more conspicuous. This could be conditioned for similar treatment to better assimilate the structure to reduce this impact and this has been offered by the applicant. The fencing is viewed against the backdrop of the cluster of buildings. Whilst there are examples of panel fences erected under permitted development rights in the vicinity, the fencing is not of a type characteristic of a rural area generally or of this locality. The boundary treatment in the local area is characterised by soft landscaping such as hedgerow interspersed with trees. Fencing, where it occurs, is predominantly post and rail/wire style. The fence provides a degree of enclosure not generally found, for example, at a farmstead, and would be more in keeping with an urban or suburban location. On that basis the fencing causes some limited harm to the character and appearance of the Green Belt and locality generally and therefore conflicts with Policies GN1 and GN3 in the WLLP.

Very Special Circumstances

- 11.11 The applicant has outlined the benefits of the fence in terms of privacy, security, limited visual impact, the disparity due to the fact the neighbour could erect such a fence on the boundary without planning permission and other planning decisions made by the Council. In terms of the disparity arising from the removal of permitted development rights, this is a consequence of previous (and current) policy in relation to permitting the change of use of traditional rural buildings in a Green Belt location and where the building in question is a character building of some historic interest (i.e. having heritage value as a non-designated heritage asset). Current Green Belt policies and Policy EN4, which maintains a presumption in favour of the protection and enhancement of existing non-designated heritage assets, still require the protection to the Green Belt and the aesthetic of the building and its setting that justifies the removal of the permitted development rights. In terms of security concerns I can only attribute limited weight as the fence does not entirely enclose the site or provide a level of protection that could be achieved by an indigenous mixed thorny hedge as alluded to in the terms of the original permission to convert the building to a residential property. With respect to other cases referenced, there no clear comparable circumstances and it is incumbent on the Council to consider each case on its merits. These and the remaining circumstances taken individually or cumulatively are not considered to constitute very special circumstances – whilst some of the benefits stated might accrue, these could be equally achievable by other, more appropriate, means of boundary enclosure such as thorny hedging.
- 11.12 In summary, I consider the circumstances submitted would not constitute 'very special circumstances' and therefore the harm to the Green Belt by way of inappropriateness, loss of openness and impact on its visual amenity are not outweighed. The fence therefore fails to meet the requirements of Policies GN1 and GN3 of the WLLP.

Impact on adjacent land uses

11.13 Whilst the development is not typical of the locality and therefore may visually impose to a greater degree than, say, an established hedge; given its height, position and distance from the neighbouring properties, I do not consider it results in any significant detrimental impact to residential occupiers of those properties. Concern has been expressed by the occupier of Gibbons Farmhouse in respect of fire risk and additional flood risk caused by the fence, however, I consider this of very limited weight in the planning consideration. The fence, in itself, will not cause flooding or displace flood storage capacity of any significance. The fence is as likely to catch fire as any vegetation in the locality. Other matters raised by the objector that have not been addressed above are not considered material to the consideration of the planning application.

Other Matters

11.14 Concern is stated that any requirement to remove the fence would breach the applicant's human rights to privacy under Section Article 8 of the Human Rights Act. In this particular case the applicant's right to privacy must be balanced against the Council's duty to protect the Green Belt and visual amenity of this rural area – protection of the environment for the protection of 'the rights and freedoms of others'. In this instance I consider the individual interests do not outweigh the strategic importance and public benefit of the integrity and amenity of the rural landscape and Green Belt.

Summary

11.15 The proposed development is considered inappropriate development in the Green Belt that results in harm by virtue of its inappropriateness, loss of openness and impact on its visual amenity. The development therefore conflicts with Policies GN1 and GN3 in the WLLP, the NPPF and the West Lancashire Design Guide SPD.

12.0 RECOMMENDATION

12.1 That planning permission be **REFUSED** for the following reasons:

Reasons for Refusal

1. The development conflicts with the NPPF and Policies GN1 and GN3 in the West Lancashire Local (2012-2027) Development Plan Document in that it constitutes inappropriate form of development in the Green Belt and results in harm to the openness and visual amenity of the Green Belt. No very special circumstances have been demonstrated to outweigh the identified harm.
2. The fence conflicts with policy GN3 and EN4 of the West Lancashire Local Plan (2012-2017) Development Plan Document and Supplementary Planning Document - Design Guide in that it is an incongruous feature in the context of the setting of the traditional rural building and wider group of former farmstead buildings which results in a detrimental impact to the visual amenity and rural character of the area and the setting of a non-designated heritage asset.