

PLANNING COMMITTEE – 18 MARCH 2021

PART I - DELEGATED

6. **20/2603/FUL - Variation of Condition 11 (Agricultural Occupation) of planning permission 17/2169/FUL to amend wording of the condition to as follows: 'The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower of such a person, and to any resident dependants' at THE MULBERRY BUSH FARM, DAWES LANE, SARRATT, WD3 6BQ (DCES)**

Parish: Sarratt Parish Council
Expiry of Statutory Period: 31.01.2021
(Extension of Time Agreed 22.03.2021)

Ward: Chorleywood North & Sarratt
Case Officer: Scott Volker

Recommendation: That conditional Planning Permission be granted (subject to deed of variation to previous Section 106 being agreed).

Reason for consideration by the Committee: This application is brought before the Committee as it has been called-in by the Parish Council for the reasons set out at paragraph 4.1.1.

1 Relevant Planning History

- 1.1 There is an extensive planning history relating to the application site. Over the years buildings/structures and works have been permitted on the site. Other developments have taken place there without planning permission, resulting in the Council taking enforcement action.

- 1.2 8/40/91 - Erection of three horse boxes – Permitted June 1991.

- 1.3 In March 2001 planning permission was refused for the erection of five static poultry houses (ref. 00/01196/FUL), for a barn incorporating a free range poultry house and storage (00/01197/FUL) and for the erection of a single storey extension to a stable block to create a hatchery, chick unit and store (00/0001/FUL). A subsequent appeal linked all three applications. In February 2002 the Inspector allowed the erection of the single storey extension and five free range poultry houses. The appeal relating to the barn was dismissed. A condition was imposed on planning permission 00/1196/FUL for the poultry houses requiring:

No more than seven poultry houses, whether permanent buildings or mobile structures, shall exist within the application site at any one time and no caravans or mobile homes shall be stationed within the site.

REASON: In the interests of the character and appearance of the Green Belt and Chilterns AONB, in accordance with Policies GB1 and N20 of the Three Rivers Local Plan 1996-2011.

- 1.4 An outline application (03/0627/OUT) for a permanent agricultural dwelling was refused planning permission in August 2003 for the following reasons:

R1 Having regard to the submitted details and an investigation into the current and proposed farming operations at The Mulberry Bush, Dawes Lane the Local Planning Authority are not satisfied that there is a sufficient agricultural justification for a permanent new dwelling on this site, having regard to the Metropolitan Green Belt policies of the Three Rivers Local Plan 1996-2001 and national policy guidance contained in PPG7 (countryside).

R2 The erection of a dwelling not justified by agricultural need would be a visible, prominent development in the locality, adversely affecting the appearance and character of this rural area within the Metropolitan Green Belt and Area of Outstanding Natural Beauty, contrary to policy GB1, GB11 and N20 of the Three Rivers Local Plan 1996-2011.

R3 The level of annual dwelling completions in Three Rivers is such that without intervention, the allocated number of dwellings for the District is likely to be significantly exceeded. Policy H3 of the adopted Local Plan provides the appropriate mechanism to restrain further release of housing sites and is considered relevant in this case. The proposal is considered to be contrary to Policy H3 (1)(iii) and H3 (3) of the adopted Local Plan.

- 1.5 A full planning application (04/0533/FUL) for the erection of a temporary agricultural worker's dwelling was refused planning permission on 18 August 2004 for the following reasons:

R1 Having regard to the submitted details and an investigation into the current and proposed farming operations at The Mulberry Bush, Dawes Lane the Local Planning Authority are not satisfied that there is a sufficient agricultural justification for a permanent new dwelling on this site, having regard to the Metropolitan Green Belt policies of the Three Rivers Local Plan 1996-2001 and national policy guidance contained in PPG7 (countryside).

R2 The location of the site is such that it is poorly located in relation to accessibility to town and local shopping centres and passenger transport and is not considered to be a sustainable form of development. The proposal is considered to be contrary to Policies GEN 1, GEN 1a and Figure 2 of the Three Rivers Local Plan 1996 - 2011.

R3 The erection of a dwelling not justified by agricultural need, and as such by virtue of the siting and size of the dwelling, would be a visible, prominent development in the locality, adversely affecting the appearance and character of this rural area within the Metropolitan Green Belt and Area of Outstanding Natural Beauty, contrary to policy GB1, GB11 and N20 of the Three Rivers Local Plan 1996-2011.

Appeals against the refusal of planning permission for a temporary (04/0533/FUL) and permanent dwelling (03/0627/OUT) were dismissed in November 2004.

- 1.6 04/1689/FUL - Erection of 2 detached poultry houses. Refused for the following reason:

R1 The proposal would comprise further spread of scattered buildings in the very attractive open landscape of the Chess Valley in the Chilterns Area of Outstanding Natural Beauty, detracting from the character and appearance of the locality, contrary to Policy 42 of the Hertfordshire Structure Plan Review 1991-2011 (adopted April 1998) and Policies N20 and N23 of the Three Rivers Local Plan 1996-2011.

- 1.7 06/0514/FUL - Erection of two detached poultry houses - Refused. Allowed on appeal subject to conditions.

- 1.8 07/1091/FUL - Agricultural barn. Refused for the following reason:

R1 The proposed agricultural barn would, by reason of its height and siting, be a prominent and visible building, which would detract from the character and appearance of the Area of Outstanding Natural Beauty, contrary to Policy N20 of the Three Rivers Local Plan 1996-2011.

- 1.9 07/1496/FUL - Two polythene tunnel greenhouses to south east of site for growing of organic herbs. Refused. Subsequent appeal allowed.

- 1.10 07/1793/FUL - Part retrospective: Retention and relocation of 4 brooder huts and levelling of soil adjacent to Dawes Common boundary. Refused for the following reason:

R1 The proposal would comprise a further spread of scattered buildings and associated development in the very attractive open landscape of the Chess Valley in the Chilterns Area of Outstanding Natural Beauty, detracting from the character and appearance of the locality and openness of the Metropolitan Green Belt, contrary to Policies GB1, N20 and N23 of the Three Rivers Local Plan 1996-2011.

1.11 07/1860/FUL - Change of Use: Land from agriculture to camp site/amenities building. Refused, subsequent appeal dismissed.

1.12 08/0164/FUL - Three temporary chicken houses. Application refused in March 2008.

A Breach of Condition Notice (BCN) was served in February 2008 following the continued presence of in excess of seven poultry houses on the site. This came into force immediately and the owner had 3 months to comply. The applicant reduced the number of permanent/temporary poultry houses in September 2008 but eleven poultry units including four brooder units remained. This BCN compliance period was held in abeyance following the submission of application 07/1793/FUL to retain four brooder units and the subsequent appeal. The appeal was dismissed on 3 October 2008. Instead of bringing a prosecution for failure to comply with the BCN, the Council proceeded to issue an Enforcement Notice alleging a breach of a condition.

At a subsequent enforcement appeal against the notice the Inspector determined that the brooder huts did not constitute development and condition 6 of 00/1196/FUL and 06/0514/FUL was void for uncertainty. For this reason, the Enforcement Notice was quashed referenced APP/P1940/C/09/2105319.

1.13 08/2277/FUL - Installation of four brooder huts and aviaries for the purposes of raising chicks to four weeks of age. This application was refused on 9 February 2009 for the following reason:

R1 The proposal would comprise a further spread of scattered buildings and associated development in the very attractive open landscape of the Chess Valley in the Chilterns Area of Outstanding Natural Beauty, detracting from the character and appearance of the locality and openness of the Metropolitan Green Belt, contrary to Policies GB1, N20 and N23 of the Three Rivers Local Plan 1996-2011.

A subsequent appeal was allowed referenced APP/P1940/A/09/2109064.

1.14 09/0813/FUL - Change of use of land for the stationing of mobile home for a temporary agricultural worker dwelling for a period of 3 years. Planning permission refused October 2009 for the following reason:

R1 The proposed temporary worker's dwelling would, by reason of its siting, design and appearance and the cumulative amount of development on the site, lead to a visually intrusive form of development in this attractive open landscape of the Chess Valley in the Metropolitan Green Belt and Chilterns Area of Outstanding Natural Beauty, detracting from the character and appearance of the locality. In addition, the proposal would fail to meet test (v) of Annex A of PPS7 and would thus comprise inappropriate development in the Metropolitan Green Belt to the detriment of the openness of the Metropolitan Green Belt. No very special circumstances have been presented to outweigh this harm. As such, the proposed development would be contrary to Policies N20, N23, GB1, GB11 of the Three Rivers Local Plan 1996-2011 and Government guidance contained in PPG2 and PPS7.

A subsequent appeal was dismissed referenced APP/P1940/A/09/2117687.

1.15 10/2087/FUL - Change of use of land for the stationing of a mobile home for a temporary agricultural worker dwelling (3 years) to supervise the agricultural business. This application was permitted on 13 January 2011 on the basis that functional and financial

need had been demonstrated for a temporary dwelling on site. This temporary dwelling has been constructed on site.

- 1.16 13/1345/FUL - Agricultural dwelling with office and clean down facilities with detached garage and log store, associated residential curtilage and septic tank. This application was refused on 25 October 2013 for the following reasons:

R1 The proposed agricultural worker's dwelling and related facilities and structures would, by reason of their size, siting and appearance and cumulative extent of development on site, lead to a visually intrusive and prominent form of development in this attractive open landscape of the Chess Valley in the Metropolitan Green Belt and Chilterns Area of Outstanding Natural Beauty, detracting from the rural character, openness and appearance of the locality. No satisfactory very special circumstances have been put forward to overcome this harm and as such, the proposed development would be contrary to Policies CP11 and CP12 of the Core Strategy (adopted October 2011) and Policies DM2 and DM7 of the Development Management Policies LDD (adopted July 2013).

R2 In the absence of an agreement or unilateral undertaking under the provisions of Section 106 of Town and County Planning Act 1990, securing restrictions in respect of the operation of the Site, there would be inadequate control of the permitted use of the Site potentially resulting in harm to the openness and rural character of the Metropolitan Green Belt and the Chilterns Area of Outstanding Natural Beauty. The application therefore fails to meet the requirements of Policies CP1, CP8, CP11 and CP12 of the Core Strategy (adopted October 2011) and Policies DM1, DM2, DM7 and Appendix 2 of the Development Management Policies LDD (adopted July 2013).

A subsequent appeal was dismissed by the Planning Inspector in January 2015 referenced APP/P1940/A/14/2213952.

- 1.17 14/0034/FUL - Temporary consent (3 years) for mobile home for use as an agricultural dwelling – Permitted on 19 June 2014.

- 1.18 17/0488/FUL - Erection of agricultural worker's dwelling with associated curtilage – This application was presented to Planning Committee in June 2017 with the recommendation for approval, with the Officer considering that the relevant functional and financial tests had been met for a permanent dwelling. However, Members overturned the Officer's recommendation and resolved to refuse planning permission for the following reason:

R1 The proposed agricultural worker's dwelling would be inappropriate development in the Green Belt and would cause harm to the openness of the Green Belt. It has not been adequately demonstrated that there is a proven need for the dwelling in accordance with the requirements of Policy DM2 and Appendix 3 of the Development Management Policies LDD (adopted July 2013) and there would be no very special circumstances to outweigh this harm. The development would therefore be contrary to Policies CP1, CP11 and CP12 of the Core Strategy (adopted October 2011) and Policies DM2 and DM7 and Appendix 3 of the Development Management Policies LDD (adopted July 2013).

- 1.19 17/1361/FUL - Temporary consent (3 years) for mobile home for use as an agricultural dwelling – Permitted November 2017.

- 1.20 17/2169/FUL - Erection of agricultural worker's dwelling with associated curtilage – Permitted December 2017 subject to conditions, including condition 11 which stated the following:

C11 The occupation of the agricultural worker's dwelling hereby permitted shall be limited to a person(s) solely or mainly working, at The Mulberry Bush in agriculture, or a widow or widower of such a person, and to any resident dependants.

Reason: The site is within an area where a dwelling would not normally be permitted and permission is only granted because the dwelling is intended to serve the needs of agriculture in accordance with Policy CP1, CP11 and CP12 of the Core Strategy (adopted October 2011) and Policies DM2 and DM7 and Appendix 3 of the Development Management Policies LDD (adopted July 2013).

This permission has been implemented and is subject to a Section 106 legal agreement. The Heads of Terms of the S.106 included the following:

- i. Removal of the temporary accommodation from the site prior to the occupation of the dwelling permitted under application 17/2169/FUL. This has been undertaken.
- ii. Restrictions on the number of chicken sheds and feed silos on site.
- iii. Restrict number of laying chickens on site at any one time and the number of chickens to be farmed for slaughter per annum
- iv. Restrict any additional temporary structures and mobile structures being constructed or brought onto the site excluding the stationing of a caravan within the residential curtilage of the agricultural dwelling or in connection with the lawful use of the site for caravan and camping purposes in accordance with Schedule 2, Part 4, Class B of the GPDO.

1.21 19/2143/FUL – Replacement Polytunnel – Refused November 2019 for the following reasons:

R1 The proposed polytunnel by reason of its siting, height and length would result in the spread of built form into the open landscape of the Area of Outstanding Natural Beauty and Metropolitan Green Belt, detracting from the openness of the Green Belt and conflicting with the purposes of including land within the Green Belt and failing to conserve and/or enhance the special landscape character and distinctiveness within the Area of Outstanding Natural Beauty and detracts from its setting. The proposed development is therefore considered to be an inappropriate form of development in the Green Belt contrary to the aims of the National Planning Policy Framework (2019), Policies CP9 and CP11 of the Core Strategy (adopted October 2011) and Policies DM2 and DM7 of the Development Management Policies LDD (adopted July 2013).

A subsequent appeal was allowed referenced APP/P1940/W/20/3247693.

1.22 19/2143/PDA - Prior Notification: Change of use of existing agricultural building to flexible commercial use (C1 Hotel) – No objection raised January 2020.

1.23 20/0402/PDF - Prior Notification: Change of use of agricultural buildings to a flexible commercial use: Class C1 hotel / holiday accommodation – Prior Approval required and Prior Approval given in April 2020.

Relevant Enforcement History

1.24 19/0206/COMP - Breach of Condition 11 (Residency) of Planning Permission 17/2169/FUL – pending consideration.

2 Description of Application Site

2.1 The application site, outlined in red on the submitted Location Plan, has access from Dawes Lane along a roadway aligning its southern boundary and contains an agricultural worker's detached dwelling granted consent under application 17/2169/FUL and occupied by the applicant. The dwelling has a brick plinth and vertical timber clad exterior with a clay tiled roof.

2.2 The wider site of The Mulberry Bush outlined in blue on the submitted Location Plan is a 4.2 hectare (11 acres) agricultural holding, lying 600 metres to the south-west of the village

core of Sarratt in South West Hertfordshire. The site lies on the side of a valley within the Metropolitan Green Belt and the Chilterns Area of Outstanding Natural Beauty. Dawes Lane aligns its south-eastern boundary. Part of the site adjacent to the south-eastern site boundary is within a Local Wildlife site. In addition to the access from Dawes Lane the wider site has access from Moor Lane to the west of the site which has recently been re-surfaced by the applicant under Schedule 2, Part 9 Class E of the GPDO. The site includes a number of buildings, some of which have undergone a change of use from agriculture to a flexible use to provide holiday accommodation (Use Class C1). One of these buildings (19/2143/PDA) is situated approximately 25 metres south-east of the agricultural worker's dwelling. Also converted are a former agricultural building located in the eastern part of the wider site, a building located centrally along the northern boundary and an agricultural building in a row of three located in the lower part of the site close to Moor Lane and closest to the northern corner of the site, all of which were permitted under application 20/0402/PDF.

- 2.3 Public footpath 52 runs parallel to part of the north-eastern boundary of the wider site and continues through Dawes Common, and woodland, to the north-east.
- 2.4 An Article 4 Direction, confirmed in 1963, applies to the site removing all agricultural permitted development rights.

3 Description of Proposed Development

- 3.1 Planning permission 17/2169/FUL for the 'Erection of agricultural workers dwelling with associated curtilage' was granted subject to 11 conditions. This application seeks planning permission to vary condition 11 ('Condition 11') attached to the permission.
- 3.2 Condition 11 of planning permission 17/2169/FUL states the following:

C11 The occupation of the agricultural worker's dwelling hereby permitted shall be limited to a person(s) solely or mainly working, at The Mulberry Bush in agriculture, or a widow or widower of such a person, and to any resident dependants.

Reason: The site is within an area where a dwelling would not normally be permitted and permission is only granted because the dwelling is intended to serve the needs of agriculture in accordance with Policy CP1, CP11 and CP12 of the Core Strategy (adopted October 2011) and Policies DM2 and DM7 and Appendix 3 of the Development Management Policies LDD (adopted July 2013).

- 3.3 The wording of the condition restricts the occupation of the dwelling to a person(s) working in agriculture on the 11 acres at The Mulberry Bush and no other farm or farmland.
- 3.4 This application seeks to vary the wording of Condition 11 to read as follows:
'The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower of such a person, and to any resident dependants'
- 3.5 The application does not seek to revise the Reason for Condition 11.
- 3.6 No changes to the dwelling itself are proposed under the application.
- 3.7 Planning permission 17/2169/FUL was approved subject to completion of a S.106 legal agreement. A Section 73 planning application results in a wholly new planning permission. It will therefore be necessary to vary the existing Section 106 by means of a Deed of Variation so as to ensure that the planning obligations secured by the principal deed also apply to the further grant of planning permission. Failing that the application would almost certainly be recommended for refusal. The S.106 seeks to control the use of the site in both the short term and the long term which included the removal of the temporary

accommodation from the site prior to the occupation of the dwelling permitted under application 17/2169/FUL. This has been undertaken. Further controls include restrictions on the number of chicken sheds and feed silos on site, restrict number of laying chickens on site at any one time, the number to be farmed for slaughter per annum, and restrict any additional temporary structures and mobile structures being constructed or brought onto the site.

4 Consultation

4.1 Statutory Consultation

4.1.1 Sarratt Parish Council: [Objection]

The Parish Council strongly objects to this application as follows:

'Agricultural use and associated occupation was a key tenet of the original application and subsequent approval. Variation to the condition to include "or last working" has the effect of nullifying the agricultural tie and hence justification for the permission. Additionally, widening the scope to include "or in forestry" potentially allows a small scale enterprise that would never have justified the need for an onsite presence per the original application for the management of a chicken farm.

The Parish Council would also like to point out that in considering this application, there are currently breaches to condition 8 of the existing permission (17/2169/FUL), specifically Part 1 Class F ([no development of] any hard surface) in respect of the laying of tarmac driveways (20/0100/COMP) and [Part 2 Class A (erection, construction, maintenance or alteration of a gate, fence, wall or other means of enclosure) with regards to the enlargement of the entrance onto Moor Lane and the installation of a new gate to the Dawes Lane entrance].

Sarratt Parish Council respectfully request that this is called into Committee if the planning officers are minded to approve.'

4.1.2 National Grid: [No response received]

4.2 Public/Neighbour Consultation

4.2.1 Number consulted: 85

4.2.2 No of responses received: 3 objections, 0 letters of support

4.2.3 Site Notice: Posted 05.12.2020 Expired 27.12.2020

4.2.4 Summary of Responses:

- Overdevelopment
- Condition 11 was carefully worded when the original planning permission was granted. A variation to include the words "or last working" and "forestry" severely undermines the integrity of the restriction.
- Retrospectively trying to legalise what is an illegal act.
- Set a dangerous precedent, and makes a mockery of the planning department and planning law in Three Rivers.
- Original application was granted on specific agricultural grounds, which he now seeks to turn back to front as no agriculture exists.
- The original conditions for planning approval have been blatantly disregarded, which should result in a demolition order.
- The application must be rejected in order to avoid setting a dangerous planning precedent.

- To permit the application would encourage building requests from huge numbers of rural applicants all of whom would meet such criteria.
- No longer an agricultural need for the dwelling to be on site
- The Mulberry Bush has failed to sustain a functional and financial need for an agricultural workers dwelling for the last 3 years since dwelling was approved.
- Current wording of condition 11 is not unreasonable and does not place unacceptable burden of the applicant.

5 Reason for Delay

5.1 None.

6 Relevant Planning Policy and Guidance

6.1 National Planning Policy Framework and National Planning Practice Guidance

In 2019 the new National Planning Policy Framework (NPPF) was published. The framework is a material planning consideration to be taken into account in planning decisions along with the National Planning Practice Guidance (NPPG). NPPF 47 states: 'Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.' This guidance applies equally to section 73 applications for the amendment of conditions on existing planning permissions (Pye v. SSOE [1998] 3 PLR 72). NPPF 79 advises that planning decisions 'should avoid the development of isolated homes in the countryside...'

6.2 The Three Rivers Local Development Plan

The application is to be considered against the relevant policies of the development plan including the Core Strategy (adopted October 2011), the Development Management Policies Local Development Document (adopted July 2013) and the Site Allocations Local Development Document (adopted November 2014). The relevant development plan policies of Three Rivers District Council reflect the guidance in the NPPF.

The Core Strategy was adopted on 17 October 2011 having been through a full public participation process and Examination in Public. Relevant policies include Policies CP1: Sustainable Development, CP2: Housing Supply, CP3; Housing Mix and Density, CP4, Affordable Housing, CP9: Green Infrastructure, CP10: Transport and Travel, CP11: Green Belt and CP12 Design of Development.

The Development Management Policies Local Development Document (DMLDD) was adopted on 26 July 2013. Relevant policies include DM1: Residential Design and Layout, DM2: Green Belt, DM4: Carbon Dioxide Emissions and On site Renewable Energy, DM6: Biodiversity, Trees, Woodland and Landscaping, DM7: Landscape Character, DM8: Flood Risk and Water Resources, DM9: Contamination and Pollution, DM10: Waste Management, DM13: Parking and Appendix 3: Agricultural and Forestry Dwellings.

7 Planning Analysis

7.1 Introduction

7.1.1 The original planning application 17/2169/FUL for the construction of a single agricultural worker's dwelling was presented to the Planning Committee in December 2017 with a recommendation for approval; the relevant functional and financial tests having been met for a permanent agricultural dwelling on the application site in the Green Belt to serve the agricultural needs of the Mulberry Bush farm in accordance with Appendix 3 of the Development Management Policies LDD. As noted in the planning officer's report, the applicant Mr Norris had been employed full time on agricultural activities at the Mulberry Bush since 2001; and it was demonstrated that there was a need for a dwelling on the site

so that an agricultural worker was readily available in connection with the operation of a chicken farm enterprise comprising of four flocks of 1,600 hens each (6,400 laying hens) and three to four batches of 700 each (up to 2,800 in total) of young chicks being reared on in different groups every 4 weeks for table birds. The business employed 4 full time workers and a number of part-time workers who attended various farmers' markets and assisted with the day-to-day running of the poultry business.

- 7.1.2 Condition 11 (agricultural occupancy condition) was attached to the permission to restrict the occupancy of the dwelling to an agricultural worker employed exclusively in connection with the active chicken farm enterprise on the 11 acres of The Mulberry Bush farm. The wording of the condition reads as follows:

'The occupation of the agricultural worker's dwelling hereby permitted shall be limited to a person(s) solely or mainly working, at The Mulberry Bush in agriculture, or a widow or widower of such a person, and to any resident dependants.'

Reason: The site is within an area where a dwelling would not normally be permitted and permission is only granted because the dwelling is intended to serve the needs of agriculture in accordance with Policy CP1, CP11 and CP12 of the Core Strategy (adopted October 2011) and Policies DM2 and DM7 and Appendix 3 of the Development Management Policies LDD (adopted July 2013).'

- 7.1.3 The 'needs of agriculture' referred to in the Reason for the condition was supported by a report produced by *Kernon Countryside Consultants* and were related to the on-site agricultural activities at The Mulberry Bush described in the officer's report and summarised in paragraph 7.1.1 above. Planning permission 17/2169/FUL has been implemented with the construction of the dwelling completed and it is currently occupied by the applicant Mr. Norris, the freehold owner of The Mulberry Bush farm. Officers note that, since shortly after the grant of planning permission for the permanent agricultural worker's dwelling, there have been no chickens kept on the site and a number of the chicken sheds have been converted into holiday accommodation as detailed within paragraph 2.3 above.

- 7.1.4 This application seeks a variation to the wording of Condition 11 (Agricultural Occupancy) of planning permission 17/2169/FUL to follow the model 'Agricultural Workers' Condition 45' set out within Appendix A (Model Conditions) of Circular 11/95 'Use of planning conditions in planning permissions' which reads as follows:

'The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower of such a person, and to any resident dependants.'

7.2 Wording of Condition 11

- 7.2.1 Section 73 of the Act permits applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. The LPA can grant planning permission unconditionally, or subject to different conditions or refuse the application if they consider the original condition(s) should continue unchanged.

- 7.2.2 Paragraph 55 of the NPPF makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

7.2.3 The PPG (Paragraph: 018 Reference ID: 21a-018-20190723) states that rigorous application of the six tests should be undertaken each time a planning condition is being considered, be that through imposition, removal or variation. If a condition fails any test this is fatal to it and its continued retention cannot be justified.

7.2.4 Policy DM2 : Green Belt says:

‘As set out in the National Planning Policy Framework, the construction of new buildings in the Green Belt is inappropriate with certain exceptions...(a) New Buildings – Within the Green Belt, except in very special circumstances, approval will not be given for new buildings other than those specified in national policy and other relevant guidance. Further guidance on the factors that will be considered in assessing applications for agricultural or forestry dwellings in the Green Belt is contained in Appendix 3.’

7.2.5 With regards to agricultural and forestry occupancy conditions, Appendix 3 of the Development Management Policies LDD states that:

“Occupancy Conditions 15. Where the need to provide accommodation to enable farm, forestry or other workers to live at or near their place of work has been accepted as providing the special justification required for new, isolated residential development in the Green Belt it will be necessary to ensure that the dwellings are kept available for meeting this need for as long as it exists. For this purpose planning permission will be made subject to appropriate occupancy conditions.”

7.2.6 It can be seen from the Reason set out in paragraph 1.20 above that Condition 11 was attached to planning permission 17/2169/FUL in accordance with, among other policies, Policy DM2 and Appendix 3 to ensure that the dwelling, which otherwise would not have been permitted, was made available and ‘kept available’ (Appendix 3:15) to meet an agricultural need relating to the agricultural use of land at the Mulberry Bush farm.

7.2.7 The application is supported by a Planning Statement prepared by Parsonson Planning Consultancy dated November 2020. The statement does not contend that ‘the needs of agriculture’ at Mulberry Bush Farm served by the dwelling referred to in the Reason for Condition 11, no longer exist. Paragraph 3.05 of the statement says, as follows:

“3.05 Taking account of LDP Appendix 3: a consequence of this omission and alteration is that if the business activities of The Mulberry Bush were to come to an end at some point in the future, the dwelling would no longer be required to be kept available to meet that agricultural need as it would no longer exist. In such circumstances, it would make it difficult for the LPA to resist an application seeking condition removal.

3.06 The variation as proposed through this application would provide the condition, and therein the dwelling, with greater opportunity to remain operative and effective into the future to a time when the original need advanced through the application may have come to an end. It is more probable than not that this would extend the life of the planning condition and this, in turn, would convey a wider benefit to agriculture and to the countryside, as envisaged by the reason given for its imposition which is concerned, more broadly, with serving the needs of agriculture rather than the singular needs of The Mulberry Bush.

3.07 Allowing only those working in agriculture at The Mulberry Bush to reside within the dwelling has further consequences. For example, if for reasons of continued viability the farming activities needed to expand, to avoid a potential breach of Condition 11 expansion and intensification would need to take place on site.

3.08 This has not only the potential to limit and restrict viability and therein the lifespan of the condition, but has wider implications through the likely negative impacts upon the limited land available at the farm.

3.09 Planning policy is designed and intended to protect the Countryside and it is contended that allowing those working locally in agriculture to reside within the dwelling would enable the farming business, should it so require, to expand upon other, more suitable, agricultural land without negatively impacting upon this sensitive location.

7.2.8 The Planning Statement, accordingly, does not contend that the agricultural business activities constituting the agricultural need for the dwelling at Mulberry Bush farm identified in the Reason for Condition 11, have come to an end; or that the dwelling no longer continues to serve the needs of the farm; or no longer remains required to be kept available to meet that agricultural need. The statement also anticipates that the agricultural business activities at the farm might be expanded and intensified in the future. In these extracts, the Planning Statement shows how the wording of Condition 11 could cause difficulties for the continuing operation and expansion of the agricultural enterprise.

7.2.9 The Planning Statement, nevertheless, says that the retention of Condition 11 cannot be justified for the following reasons:

“(1.) it is unreasonable wherein it fails a requisite test for conditions prescribed by paragraph 55 of the National Planning Policy Framework and this is fatal to it;
(2) it fails to serve its full and intended planning purpose;
(3) its continued retention is placing unjustifiable burdens upon the applicant;
(4) this proposal will not cause harm;
(5) in development plan and decision making terms these are material considerations of significant weight.”;

7.2.10 As noted at paragraph 7.1.2 above, planning permission 17/2169/FUL, including Condition 11, was granted for the agricultural worker’s dwelling to serve the needs of agriculture at The Mulberry Bush farm. The planning purpose of Condition 11 was to attach an agricultural tie to the dwelling to restrict its occupancy in connection with the agricultural enterprise at The Mulberry Bush. It is appropriate, accordingly, in determining this application which seeks a change to the wording of the condition, to consider whether Condition 11 meets the six tests in NPPF 55 as set out at paragraph 7.2.2 above.

1. Necessary, 2. Relevant to Planning & 3. Relevant to development permitted.

7.2.11 The Planning Statement 3.01 acknowledges that:

“in the circumstances of the 2017 planning permission, the imposition of an agricultural occupancy condition was deemed necessary as planning permission would in all probability, have been refused without one. This is likely to remain the case today.

Relevant to planning and Relevant to the development to be permitted – for the same planning reason, the imposition of an agricultural occupancy condition is considered to be relevant.”

7.2.12 The LPA consider that this does remain the case today and that an agricultural occupancy condition restricting the occupation of the dwelling is necessary, relevant to planning and relevant to the development permitted applying policies DM2 and CP11. Planning permission for an isolated residential development within the Green Belt would not have been supported without proof of the dwelling being required to ‘serve the needs of agriculture’ as stated in the Reason for Condition 11. This planning purpose for the imposition of Condition 11 remains extant today for the reasons set out in paragraph 7.2.6 above.

4. Enforceable

- 7.2.13 With regards to enforceability, the submitted Planning Statement 3.01 states that Condition 11 “appears to meet the test of enforceability.” Officers agree that this is the case. The condition restricts the occupation of the dwelling to readily identifiable persons.

5. Precision

- 7.2.14 Condition 11 is precise in its terms. Its wording is clear. This is acknowledged in the Planning Statement 3.01 which states that “we can understand the terms used within Condition 11 inferring precision.” The statement, however, argues that Condition 11 is unreasonable in that it is “incomplete and overly limiting” and “compliance is entirely reliant upon work undertaken at the Mulberry Bush.”

6. Reasonableness

- 7.2.15 The Planning Statement questions the reasonableness of Condition 11 on the grounds that it precludes occupation of the dwelling by someone working in agriculture within the locality or someone who last worked in agriculture in the locality. The Applicant’s agents have drawn attention to the model condition 45 in Appendix A of Circular 11/95 worded as follows:

‘The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry or a widow or a widower of such a person, and to any resident dependants.’

- 7.2.16 While Circular 11/95 has been cancelled, the Government advises that this is ‘With the exception of Appendix A (model conditions) which is retained;’ and that the circular is replaced by National Planning Practice Guidance. Paragraph: 015Reference ID: 21a-015-201403 of the NPPG says:

Is it appropriate to use conditions to limit the benefits of the planning permission to a particular person or group of people?

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.

- 7.2.17 Condition 11 limits the occupation of the dwelling not to a particular class of people such as agricultural or forestry workers working in the countryside generally, but to a particular person, a worker solely or mainly working only on the 11 acres of Mulberry Bush farm and his or her family. In addition, the condition does not cater for the circumstances where that person retires.

- 7.2.18 The proposed extension of the class of persons entitled to occupy the dwelling would, however, accord with the model condition and the guidance in paragraph 103 of Circular 11/95 upon which it was founded:

103. It should not be necessary to tie the occupation of the dwelling to workers engaged in one specific farm or forestry business even though the needs of that business justified the provision of the dwelling. The model occupancy condition will ensure that the dwelling is kept available to meet the needs of other farm or forestry businesses in the locality if it is no longer needed for the original business, thus avoiding a proliferation of dwellings in the open countryside.

- 7.2.19 While the LPA acknowledge that Circular 11/95 has been cancelled, this policy rationale for the wording of the model condition has been upheld by inspectors on appeal. A recent example is the appeal decision of Inspector Walker MRTPI 17/12/2019 APP/R0660/W/19/3236598 where in paragraph 21 he held:
- 'In the interests of protecting the open countryside from unacceptable encroachment, a condition is necessary restricting the building use to only those employed in agriculture or forestry or their widowed spouse and resident dependants. At the hearing there was a discussion as to whether there should be a personal condition tying the dwelling to the business. However, were the business to cease trading the dwelling would not be able to be occupied, which would put pressure on the Council to remove the condition, resulting in it becoming an open market dwelling.'*
- 7.2.20 Where Condition 11 restricts the occupation of the dwelling to persons working on the farm and no other persons, it has no regard to the future possibility of the failure of the agricultural business at The Mulberry Bush. Were the business to cease, the dwelling would not be able to be occupied which would put pressure on the Council to remove the condition with the result in it becoming an open market dwelling. This is a risk that is recognised in national planning guidance as one to be avoided in the interest of protecting the countryside. And in the LPA's view, it is a real risk inherent in the wording of Condition 11 that is not in the public interest of protecting the countryside in the Green Belt in Three Rivers District.
- 7.2.21 Following the grant of application 17/2169/FUL, the LPA have been in receipt of a number of concerns that the applicant has breached Condition 11 of the permission as the chicken farm enterprise, which justified the need for a permanent dwelling to be on the application site, appears to have ceased. An enforcement investigation was subsequently opened (ref: 19/0206/COMP) and is pending consideration. While it is not appropriate to pre-judge the outcome of the enforcement proceedings, the possibility of the agricultural business at The Mulberry Bush farm ceasing reinforces the planning merits of widening the scope of the occupancy of the dwelling to include persons employed or mainly employed on agriculture in the locality.
- 7.2.22 The objective of planning policy as contained in the NPPF the NPPG and model condition 45, is to seek to retain agricultural dwellings to ensure that they can be kept available to meet future agricultural needs within the locality, and not just for the purposes of a single holding
- 7.2.23 In addition to the above considerations, Condition 11 omits the phrase "*or last working*" which can be also be considered unreasonable. The term "*last working*" is included in the model to cover the case both of a person who is temporarily unemployed or of a person who from old age or illness is no longer able to work in agriculture.
- 7.2.24 The words 'or mainly working' would include persons who engaged in other part-time employment enabling them to continue to remain working in agriculture in the interests of the rural economy.
- 7.2.25 In these circumstances, where up-to-date national planning policies recognise that where agricultural dwellings are granted planning permission as an exception to restrictive countryside policies, agricultural occupancy conditions should accommodate a class of persons, namely agricultural and forestry workers working in the countryside generally, the LPA considers it is arguable that Condition 11 places an unreasonable planning restriction on the occupation of the dwelling.
- 7.2.26 In addition, Condition 11, as currently worded, would place limitations on the use of the dwelling to serve the commercial agricultural needs of the farm, including the ability to raise finance, should the holding expand beyond the existing 11 acres.
- 7.3 The proposed condition to replace Condition 11

- 7.3.1 The application seeks the removal of Condition 11 attached to planning permission 17/2169/FUL and its replacement by the words:

The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower of such a person, and to any resident dependants.

- 7.3.2 These words replicate the words in the 'Agricultural Workers' Condition 45 in saved Appendix A of Circular 11/95. In the LPA's view, the proposed condition would meet the six tests set out within paragraph 55 of the NPPF.

- 7.3.3 In addition, the proposed condition would accord with the generality of development plan policies CP11 of the Core Strategy (adopted October 2011) and Policy DM2 and Appendix 3 of the Development Management Policies LDD (adopted July 2013) in ensuring that the occupation of the dwelling remained limited to a class of people employed or mainly employed in agriculture in the locality.

7.4 Conclusion

- 7.4.1 In conclusion, in its current form Condition 11, is considered to be not in accord with to up-to-date NPPF and NPPG guidance including model condition 45 and arguably unreasonable. The substitute condition sought to be imposed by the application, follows the wording of the model and is considered to meet the tests of paragraph 55 of the NPPF. The planning permission sought made subject to the substitute condition would accord with the generality of the development plan policy in CP11 of the Core Strategy (adopted October 2011) and Policy DM2 and Appendix 3 of the Development Management Policies LDD (adopted July 2013) in ensuring that the dwelling remained subject to an appropriate agricultural occupancy condition and would, thereby, better serve the needs of agriculture, including forestry and the public interest in protecting the countryside in this part of the District.

- 7.4.2 The proposed variation of Condition 11 would not result in any greater harm to the openness of the Green Belt as the built form currently exists and there would be no intensification of use, additional incursion of residential development or domestic paraphernalia into the countryside or Green Belt than that associated with the development of the dwelling under 17/2169/FUL.

- 7.4.3 For these reasons, the proposed variation of Condition 11 to follow model condition 45 is considered acceptable and should be granted planning permission.

8 **Recommendation**

- 8.1 That subject to the completion of the Section 106 deed of variation, that the application be delegated to the Director of Community and Environmental Services to **GRANT PLANNING PERMISSION** subject to the following conditions:

- C1 Notwithstanding the provisions of the Town and Country (General Permitted Development) Order 2015 (or any other revoking and re-enacting that order with or without modification) no development within the following Classes of Schedule 2 of the Order shall take place:

Part 1

- Class A – enlargement, improvement or other alteration to the dwelling
- Class B – enlargement consisting of an addition to the roof
- Class C – alteration to the roof
- Class D – erection of a porch
- Class E – provision of any building or enclosure
- Class F – any hard surface

Class G – provision of a chimney, flue, soil or vent pipe
Class H – installation, alteration or replacement of an antenna

Part 2

Class A – erection, construction, maintenance or alteration of a gate, fence, wall or other means of enclosure

No development of any of the above classes shall be constructed or placed on any part of the land subject of this permission.

Reason: To ensure adequate planning control over further development having regard to the limitations of the site and in the interests of the visual amenities of the site and the area in general, in accordance with Policies CP1, CP9, CP11 and CP12 of the Core Strategy (adopted October 2011) and Policies DM1, DM2, DM7 and Appendices 2 and 3 of the Development Management Policies LDD (adopted July 2013).

- C2 No external lighting shall be installed on the site or affixed to any buildings on the site unless the Local Planning Authority has first approved in writing details of the position, height, design and intensity. The lighting shall be installed in accordance with the approved details.

Reason: In the interests of visual amenity and to meet the requirements of Policies CP1, CP11 and CP12 of the Core Strategy (adopted October 2011) and Policies DM1, DM2, DM7 and DM9 and Appendices 2 and 3 of the Development Management Policies LDD (adopted July 2013).

- C3 The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower of such a person, and to any resident dependants'.

Reason: The site is within an area where a dwelling would not normally be permitted and permission is only granted because the dwelling is intended to serve the needs of agriculture in accordance with Policy CP1, CP11 and CP12 of the Core Strategy (adopted October 2011) and Policies DM2 and DM7 and Appendix 3 of the Development Management Policies LDD (adopted July 2013).

- C4 The development shall be maintained in accordance with the Landscaping Plan referenced 1246.LP.01 REV-A including the replacement of any trees or plants which die, are removed or become seriously damaged or diseased in the next planting season with others of a similar size or species, for a period for five years from the date of the approved scheme was completed as agreed in writing by the Local Planning Authority on 12th March 2018.

Reason: In the interests of visual amenity in accordance with Policies CP1, CP11 and CP12 of the Core Strategy (adopted October 2011) and Policies DM1, DM2 and DM7 and Appendices 2 and 3 of the Development Management Policies LDD (adopted July 2013).

- C5 The parking layout shall be maintained in accordance with plan 1246.LP.01 REV-A and shall be kept permanently available for the use of residents and visitors to the site as agreed in writing by the Local Planning Authority on 12th March 2018.

Reason: To minimise danger, obstruction and inconvenience to highway users in the interests of safety in accordance with Policies CP1, CP10 and CP12 of the Core Strategy (adopted October 2011) and Policy DM13 and Appendix 5 of the Development Management Policies LDD (adopted July 2013).

8.2 Informatives

- I1 The Local Planning Authority has been positive and proactive in its consideration of this planning application, in line with the requirements of the National Planning Policy

Framework and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015. The development maintains/improves the economic, social and environmental conditions of the District.

- I2 The applicant is reminded that this planning permission is subject to either a unilateral undertaking or an agreement made under the provisions of Section 106 of the Town and Country Planning Act 1990.