**7. 17/2169/FUL – Erection of agricultural workers dwelling with associated curtilage at The Mulberry Bush, Dawes Lane, Sarratt, WD3 6BQ for Mr Norris**

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| Parish: Sarratt | Ward: Sarratt |
| Expiry Statutory Period: 05.12.2017 Officer: Scott Volker  Recommendation: That Planning Permission be granted subject to Conditions. | |
| Reason for consideration by the Committee: The application has been brought before the Planning Committee at the request three Members of the Planning Committee and of the Parish Council. | |
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1 **Relevant Planning History**

1.1 There is an extensive planning history at this site. The site comprises a free range egg enterprise. Over the years buildings/structures and works have occurred on the site, several without planning permission, resulting in the Council taking Enforcement action. Some appeals have been allowed and some dismissed. A summary of the planning history is provided below.

1.2 The single storey building used as the service building (Building 8), built adjacent to the southern site boundary was granted consent under planning permission 8/40/91.

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 (Buildings 1, 2, 4, 5 and 6). The appeal for the barn was dismissed. A condition was imposed on planning permission 00/1196/FUL for the poultry houses requiring:

1.4 *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.*

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

*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).*

*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.*

*The level of annual dwelling completions in Thee Rivers is such that without intervention, the allocated number of dwellings for the District is likely to be significantly exceed. 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.*

1.6 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:

*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).*

*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.*

*The erection of a dwelling not justified by agricultural need, and as such by virtue if 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.*

1.7 Appeals against the refusal of planning permission for a temporary and permanent dwelling were dismissed in November 2004.

1.8 04/1689/FUL - Erection of 2 detached poultry houses. Refused for the following reason:

*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.*

1.9 06/0514/FUL - Erection of two detached poultry houses - Refused. Allowed on appeal subject to conditions, including a repeat of a condition on planning permission 00/1196/FUL:

*(6) 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.*

1.10 07/1091/FUL - Agricultural barn. Refused for the following reason:

*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*

A subsequent appeal was allowed. Groundworks in connection with this permission have been implemented but the barn has not yet been constructed.

1.11 07/1496/FUL - Two polythene tunnel greenhouses to south east of site for growing of organic herbs. Refused. Subsequent appeal allowed. The poly tunnels have been implemented.

1.12 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:

*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 dismissed on 3 October 2008.

1.13 07/1860/FUL - Change of Use: Land from agriculture to camp site/amenities building. Refused, subsequent appeal dismissed.

1.14 08/0164/FUL - Three temporary chicken houses. Application refused in March 2008.

1.15 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. However, this appeal was dismissed on 3 October 2008. Instead of prosecuting following the failure to comply with this Breach of Condition Notice the Council decided an Enforcement Notice alleging a breach of a condition was the most appropriate way to progress. This decision was taken in light of Government advice (as contained in Circular 10/97: Enforcing Planning Control) which makes it clear that a BCN should not be used where there is any doubt as to the correct interpretation of a condition. The appellant made it clear that he believed there was such doubt in this case.

At a subsequent enforcement appeal 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.

1.16 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:

*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.*

This application was allowed at appeal. However, the Inspector determined that the brooder huts were mobile structures which do not amount to development.

1.17 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:

*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.

1.18 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.

1.19 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 (APP/P1940/A/14/2213952).

1.20 13/2030/FUL - Replacement of existing temporary mobile home with detached permanent agricultural workers dwelling and the placement of excavated soil resulting in the raising of land levels. This application was presented to Planning Committee in December 2013 with a recommendation for approval, with the Officer considering the relevant functional and financial tests had been met for a permanent dwelling. However, at this meeting Members resolved to defer the item to seek further information, specifically Members requested a second opinion was sought on the agricultural need for a permanent dwelling on this site. The approved Planning Committee minutes state,

*‘Councillor Ann Shaw referred to the planning history of the site over some 20 years. She stated that a permanent dwelling should only be permissible if a functional and financial need for a permanent on-site agricultural worker was established beyond doubt. For this a viable and verifiable business plan was required. In the light of current information concerning stock levels and the situation of the business, she considered that the Council should not determine the application until it had obtained an expert second opinion on the functional and financial need for a permanent on-site agricultural worker and an updated business plan.’*

The Committee resolution stated,

*RESOLVED:-*

*that the application be deferred to enable the Council to obtain clarification of the evidence base from an Agricultural Consultant and to investigate new evidence relating to the business use of the site.*

The application was subsequently withdrawn. However, Officers followed up the request for a second opinion on the submitted information by commissioning a second agricultural consultant. This consultant reviewed the information submitted in conjunction with a temporary dwelling (ref. 14/0034/FUL) and the findings of the first consultant but also considered whether the tests had been met for a permanent dwelling.

1.21 14/0034/FUL - Temporary consent (3 years) for mobile home for use as an agricultural dwelling – This application was approved on 19 June 2014. The temporary permission expires 19 July 2017.

1.22 17/0488/FUL - Erection of agricultural workers 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 Officers 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).

1.23 17/1361/FUL - Temporary consent (3 years) for mobile home for use as an agricultural dwelling – Permitted November 2017.

2. **Detailed Description of Application Site**

2.1 For the purposes of reading this report and, more particularly, identifying the buildings referred to herein, it will be necessary to refer in particular to plan 1246.01.01 REV-E, attached at **Appendix A**, accompanying this application.

2.2 The site of The Mulberry Bush is a 4.2 hectare (11 acres) 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 the south-eastern site boundary. Part of the land adjacent to the south-eastern site boundary is within a Local Wildlife site.

2.3The access to the site is from Dawes Lane along a roadway aligning the southern boundary together with a water main allowed on appeal in 1992. Another surfaced track runs north-west from this roadway across the site leading to another part of the field/site to an area of trees and a permanent poultry unit (Building No.4). At the west of the site there is an additional access leading from Moor Lane. A gravel track leads from this access along the southern site boundary to a single storey building (Building No. 8) built adjacent to the southern boundary. This building, built in two stages under planning permission 8/40/91, was previously used as stables but is now used in connection with the agricultural enterprise. The temporary mobile home (Building No.9) is sited to the south-east of this.

2.4 Public footpath 52 runs in proximity to part of the north-eastern boundary and continues through Dawes Common, and woodland, to the north-east.

2.5 An Article 4 Direction, confirmed in 1963, exists on the site removing all agricultural permitted development rights. However, the majority of existing poultry houses and storage buildings are mobile units and have not required planning permission as they do not comprise development within the meaning of Section 55(1) of the Town and Country Planning Act 1990.

2.6 The buildings currently on site are:

* A temporary mobile home (consent expired July 2017 however application 17/1361/FUL for the retention of the mobile home is pending consideration) (Building 9)
* 5 x permanent poultry units (Buildings 1, 2, A, 4 and 5)
* 3 x feed silos (Beside buildings 1, 4 and 5)
* 2 x poly tunnels (Building 10)
* 1 x fire damaged barn (Building 6)
* Single storey former stable building used as butchery/egg grading room, wash facilities (Building 8)

3. **Detailed Description of Proposed Development**

3.1.1 Full planning permission is sought for the erection of an agricultural workers dwelling with associated curtilage.

3.1.2 The proposed dwelling would be located on the footprint of Building 7 which was the agricultural barn allowed on appeal Ref: APP/P1940/A/07/2054608/NWF and located opposite Building 8. The dwelling would hold the same dimensions and appearance as the dwelling proposed under application 17/0488/FUL.

3.1.3 The building would be ‘L’ shaped and would have a footprint of a maximum width of 12.5 metres; depth of 9.7 metres with a pitched roof form measuring 6.4 metres in height, sloping down to an eaves height of 3.9 metres. The dwelling would be two-storey and would have a total floorspace measuring 120sq. metres. The dwelling would have a single storey gabled element which would project from the north-western elevation of the main dwelling to create the ‘L’ shape. This feature would have a lower ridge height than the main dwelling set down 1.6 metres from the main ridge. The dwelling would have a brick plinth and vertical timber clad exterior with a clay tiled roof. Glazing is proposed within all elevations of the building. The main entrance would be located within the north-western elevation and an additional door providing access to the amenity space is located within the south-eastern elevation. Two rooflights are proposed within each roofslope of the main dwelling. The dwelling would contain three bedrooms. The curtilage of the dwelling would measure approximately 520sq. metres and would be enclosed by the existing hedgerow along the south-eastern and north-western boundaries.

3.1.3 The 4.2ha site was purchased by the applicant in 1990 with the intention of establishing a small agricultural holding. In 1994 an egg/organic poultry production enterprise was established. The applicant, Mr Norris, has been employed full time on these agricultural activities since 2001.

* + 1. The applicant’s business plan details that the current enterprises comprise four flocks of 1,600 hens each (6,400 laying hens) and three or 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 applicant also slaughters and processes meat birds on site, and sells the produce together with eggs, at various Farmers Markets in the area and London. In addition to meat and eggs the unit also produces prepared foods such as pies, quiches and sausages for sale at markets. It is also stated in the Business Plan that there is occasional use of the poly tunnels for herb and vegetable production.

3.1.5 The business employs 4 full time workers and a number of part-time workers who attend various farmers’ markets and assist with the day-to-day running of the poultry business.

3.1.6 Summary of differences between current and past planning applications:

3.1.7 The following table provides a brief overview of the main differences between the current and past planning applications at the site for a dwelling. The changes between the applications relate solely to the positioning of the dwelling as expressed below. This tables should be read in conjunction with the submitted plan 1246.03.01 REV-B.

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| --- | --- | --- | --- |
|  | **12/2377/FUL** | **13/0544/FUL** | **13/1345/FUL** |
| **Location**  **of dwelling on site** | In-between existing poly tunnels and poultry house (No.6) | Initially opposite service building (No.8), re-sited during application towards north east of site (in-between poultry house No.1 and service building (No.8) | In-between poultry house No.1 and service building (No.8) the slope towards the western side of the site |
| **Height** | 7m | 7m | 7m |
| **Total Floor Area (internal)** | 137 sqm | 137 sqm | 137 sqm |
| **Materials**  **Roof:** | Clay Tiles | Clay Tiles | Clay Tiles |
| **Walls** | Brick | Brick | Brick |
| **Windows** | Timber | Timber | Timber |
| **Decision** | Withdrawn | Withdrawn | Refused |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **13/2030/FUL** | **16/1675/FUL** | **17/0488/FUL** | **17/2169/FUL** |
| **Location**  **of dwelling on site** | Opposite service building (No.8) | In the location of the existing fire damaged building (No.6) | In the location of the two existing poly tunnels (No.11) | In the location of the agricultural barn (No.7) |
| **Height** | 7m | Two linked buildings ranging between 4.7m and 5.1m. | 6.4m | 6.4m |
| **Total Floor Area (internal)** | 137 sqm | 123 sqm | 120 sqm | 120 sqm |
| **Materials**  **Roof:** | Clay Tiles | Clay Tiles | Clay Tiles | Clay Tiles |
| **Walls** | Brick | Vertical timber cladding | Brick Plinth & Vertical Timber Cladding | Brick Plinth & Vertical Timber Cladding |
| **Windows** | Timber | Timber | Timber | Timber |
| **Decision** | Withdrawn | Withdrawn | Refused | Pending |

4. **Consultation**

4.1 **Statutory Consultation**

4.2 Sarratt Parish Council [Objection]

The Parish Council strongly object to this application and request that if officers are minded to approve it is called into committee

The application is for a new dwelling in the Greenbelt for which no special circumstances are being demonstrated.

The proposal is inappropriate development to the detriment of the AONB and The Green Belt

The Inspector’s decision of 28th January should be upheld.

4.3 Chilterns Conservation Board

No comments received

4.4 Chiltern District Council [No objection]

This Council has considered the above application and raises no objection to the application subject to your authority ensuring that the proposal complies with all relevant policies contained in the adopted Development Plan and guidance contained in the National Planning Policy Framework.

4.5 Herts Ecology [No objection]

Thank you for consulting Hertfordshire Ecology on this application. We have previously provided comments on proposals at this site and I have the following comments to make now:

The Hertfordshire Environmental Records Centre has highlighted the farm complex as an Ecosite\* known as ‘Dawes Common Field’ (ref 82/011). It was described in 1991 as having unimproved to semi-improved neutral grassland, partly grazed and partly cut for hay. The grassland was not particularly species-rich. There was an area of recent planting, which would now be over 25 years old.

\* Ecosites do not have any form of status of importance, but are merely sites that we have some ecological information on - thus they do support some wildlife interest, at least at a local level. Whilst these sites are often a valuable starting point in identifying the county's wildlife resource, they do not meet the rigorous and quantifiable assessment criteria needed to identify them as non-statutory Local Wildlife Sites.

Notwithstanding the above, the application site itself appears to be in an existing area of hardstanding where a former structure/barn has been removed (sometime since 2010 according to aerial photographs). Consequently, due to the nature and scale of these proposals, I do not consider that any ecological surveys are necessary in this instance.

I do not consider ecology to be a constraint to these proposals and the application can be determined accordingly.

4.6 Herts & Middlesex Wildlife Trust

No comments received.

4.7 Thames Water

No comments received.

4.8 Affinity Water

No comments received.

4.9 Environment Agency

No comments received.

4.10 Environmental Health

No comments received.

4.11 Environmental Protection

No comments received.

4.12 National Grid

No comments received.

4.13 Herts Property Services [No objection]

Herts Property Services do not have any comments to make in relation to financial contributions required by the Toolkit, as this development is situated within Three Rivers’ CIL Area A and does not fall within any of the CIL Reg123 exclusions.  Notwithstanding this, we reserve the right to seek Community Infrastructure Levy contributions towards the provision of infrastructure as outlined in your R123 List through the appropriate channels.

5. **Neighbour Consultation**

* 1. Site Notice: Site notice posted 26 October 2017 and expired 16 November 2017.

5.1.2 Neighbours consulted: 86

5.1.3 Number of responses: 16 (23 supporting comments 14 objections).

5.1.4 Summary of Responses:

* Adverse impact on Conservation Area.
* Overdevelopment.
* Previous applications and appeals relevant to this application.
* Application is no different to scheme refused by the Planning Committee previously.
* No clear functional need for an agricultural dwelling.
* No valid supporting information supporting the financial viability of the project.
* Conflicts with Green Belt policy.
* Supposed to be Chilterns AONB and Green Belt, area supposed to be protected from development, encroachment that would not preserve the openness of the land.
* Inappropriate development which is by definition harmful to the Green Belt.
* Proposed development would harm the landscape and scenic beauty of the Chilterns AONB
* Development would conflict with the aims of the AONB and would harm the natural beauty of the landscape.
* Unnecessary and unjustified application.
* Need can be fulfilled by applicant’s existing dwelling just down the road
* Does not warrant additional dwelling.
* Permanent accommodation is not warranted and ultimate intended use must be questioned.
* Would be inconsistent to grant planning permission given previous decisions on applications within Green Belt.
* Additional levels of traffic.
* Grant of permission would be inconsistent with previous decisions.

6. **Reason for Delay**

6.1 Committee Cycle.

7. **Relevant Local Planning Policies:**

7.1 National Planning Policy Framework (NPPF)

7.1.1 On 27 March 2012, the framework of government guidance in the form of Planning Policy Statements and Planning Policy Guidance Notes was replaced by the National Planning Policy Framework (NPPF). The adopted policies of Three Rivers District Council reflect the content of the NPPF.

7.2 The Three Rivers Local Plan Core Strategy:

7.2.1 The Core Strategy was adopted by the Council on 17 October 2011. Relevant Policies include: CP1, CP2, CP3, CP4, CP9, CP10, CP11 and CP12.

7.3 Development Management Policies LDD:

7.3.1 The Development Management Policies LDD was adopted on 26 July 2013 having been through a full public participation process and Examination in Public. Relevant policies include: DM1, DM2, DM4, DM6, DM7, DM8, DM9, DM10 and DM13 and Appendices 2, 3 and 5.

7.4 The Site Allocations LDD:

7.4.1 The Site Allocations LDD was adopted on 25 November 2014 having been through a full public participation process and Examination in Public. Relevant policies include SA1.

7.5 Other

7.5.1 The following Acts and legislation are also relevant: The Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010, the Natural Environment and Rural Communities Act 2006 Habitat Regulations 1994, the Localism Act 2011 and the Growth and Infrastructure Act 2013.

7.5.2 The Community Infrastructure Levy (CIL) Charging Schedule (adopted February 2015).

8. **Analysis**

8.1 Planning History

8.1.1 Planning application 00/1196/FUL for five permanent poultry houses (Buildings 1, 2, A, 4 and 5) was granted on appeal in 2002. Condition 6 of this permission limited the number of poultry houses as follows:

*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.*

8.1.2 This condition was repeated on a further appeal consent for two permanent poultry houses (Buildings 6 and 7) in 2007 (ref. 06/0514/FUL). Further development on the site has historically been considered in the context of this condition which limited the amount of development on this sensitive site.

8.1.3 However, in determining the planning appeal following refusal of application 08/2277/FUL (installation of four brooder huts and aviaries for the purposes of raising chicks to four weeks of age), the Inspector (in January 2010) quashed this condition, stating:

*“Condition 6 is not clear on its face. Although it is possible to understand the reasoning behind the decision to impose the condition, the condition itself is flawed, as it does not say with sufficient clarity what a “poultry house” is or how large it could be. There remains doubt about whether the term “poultry house” would include other buildings and structures on the farm which are variously described by the appellant and the Council as chicken houses, brooder units, growing units, chicken sheds or poultry arcs. It might be assumed that the seven units that are allowed to exist on the site at any one time should be no bigger than the five being approved but there is no clear evidence to support this assumption. I have seen poultry houses considerably bigger than anything at The Mulberry Bush and the wording of the condition would not necessarily preclude something on a larger scale. A more detailed description of what was being approved together with a reference to a plan might have helped. As it is, the Council and the appellant have both produced plausible interpretations of what the condition means. They cannot both be right, so the inevitable conclusion must be that the condition is void for uncertainty. On a poultry farm with a range of different buildings and structures more precision is needed. A condition which is not sufficiently precise for the applicant to be able to ascertain what must be done to comply with it, is ultra vires and cannot be imposed (Circular 11/95 paragraph 31).”*

8.1.4 In quashing the condition, the Inspector subsequently allowed the retention of 4 brooder units and their aviaries as they were mobile structures, determining that they did not constitute development within the meaning of Section 55(1) of the Town and Country Planning Act 1990.

8.1.5 This decision meant that the Council could control development requiring planning permission, but could no longer exert control with regard to mobile and temporary structures on the site. It was within this context that subsequent applications 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) and application 10/2087/RSP (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 run from The Mulberry Bush) were considered. (It should be noted that at the time of the appeal decision on the previous application for a temporary agricultural worker’s dwelling (09/0813/FUL) the Inspector had received the details of the quashed condition and took this into account in reaching his decision to dismiss the appeal, discussed further below.)

8.1.6 With regard to application 09/0813/FUL (temporary agricultural worker’s dwelling), this was refused planning permission in October 2009. It was refused permission on grounds of its siting, design and appearance and the cumulative amount of development on the site contrary to test (v) of Annex A of PPS7.

8.1.7 The appeal was dismissed in April 2010. The Inspector recognised in relation to previous decisions for development at the site that these:

*“were made in the context of the 2002 condition which limited the number of poultry houses to no more than 7. It was a consistent feature of the Inspectors’ reasoning that protecting the landscape of the AONB was of the highest priority. The poultry farm was operated using various temporary poultry sheds, and their replacement by permanent ones would improve the character of the area and reduce the overall harm to the AONB. Each decision was thus a balancing exercise, whereby the harm to the AONB of allowing permanent structures was outweighed by the consequent removal of the ugly mobile units. Even the barn permission of 2008 noted it would enable the removal of ugly lorry bodies currently used for storage. Overall the farm was limited to 7 poultry sheds which effectively controlled its impact on the AONB.*

8.1.8 The Inspector acknowledged,

*“In January 2010 an enforcement appeal was issued which concluded the condition limiting the number of poultry houses to no more than 7 was void for uncertainty and quashed the enforcement notice requiring various mobile units to be removed to bring the total number down to 7.”*

8.1.9 In dismissing the appeal the Inspector stated,

*“16. On its own, the impact of the mobile home would not be great, but it would help consolidate the immediate group of buildings, in effect creating a farmstead, in what was until relatively recently, open countryside. However, I also need to consider the effect of allowing a residence on the future of the farm. I was informed that free range laying birds require a certain number of square metres each. Various figures were discussed, but essentially, given the size of the farm, the numbers of chickens proposed in the expanded business plan would fill up the space available. These could all be housed in the permanent poultry houses, barn etc, and there would be no need for any of the unsightly temporary structures. Without a residential presence on site the maximum numbers are unlikely to be reached. However, all the planning permissions granted so far have been on the understanding that there would be strict control over the numbers of poultry units occupying the fields. Since control was effectively removed following the success of the enforcement appeal, there is no reason why the appellant should remove any of the temporary structures, nor anything to prevent him from adding more, both of which would be harmful to the AONB.*

*17. The only control over the size or intensity of the use is through the linkage of the proposed expansion to a residential presence, without this presence the farm is unlikely to grow beyond the size it is now and possibly would contract slightly. I accept there is no control over how the appellant would balance the permanent and temporary structures required, but I consider it much more likely there will be a demand for more temporary structures should a residence be established than if not.*

*18. The assumption that all the birds could be accommodated within the buildings that have planning permission is based on the current business plan. But with a residence there would be effectively no limit to the farm. A change of emphasis between layers and broilers could lead to many more birds being housed on site. More land could be acquired, or even different, more intensive uses could be considered. While these future scenarios are speculative, none are possible without a residential presence. Allowing the mobile home would thus open up a completely different future for the farm. This is likely to be severely harmful to the landscape of the AONB, and would undermine the efforts of previous Inspectors to reduce the impact of the farm. Taken together with the specific impact of the mobile home I consider that allowing the proposal to go ahead would seriously harm the landscape character of the AONB.*

*19. I understand that at present the farm supports several workers and these jobs may well be at risk if the appeal is not allowed. It was not clear how far the current stocking levels are dependant on the residential presence that has been established without planning permission, and the business seems to have been growing steadily so far without a permanent on site presence, particularly as the appellant lives only 7 minutes drive away. There might well be a negative impact on the number of jobs at the farm, but this is not certain, and does not outweigh the harm I have identified above.*

*20. Consequently, I find the proposal would cause harm to the character and appearance of the AONB. It does not pass the fifth criterion of paragraph 12 of Annex A to PPS7, which sets out the tests to be applied for temporary agricultural dwellings and so is contrary to polices N20 and N23 of the Three Rivers Local Plan (2002), which require priority to be given to the conservation and enhancement of the AONB and managing desirable elements of the landscape. Because the proposal is for a residential use it is also inappropriate development in the Green Belt. As I have concluded it fails the tests of PPG7 (PPS7) and no other arguments have been put forward that would comprise very special circumstances, it is thus contrary to the advice in PPG2 (Green Belts) and policies GB1 and GB11 of the local plan.*

8.1.10 With regard to application 10/2087/FUL for “the 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 by the Council in December 2010. In determining the application, the Council recognised that the functional and financial tests for a temporary dwelling had been met. Indeed, the applicant’s agricultural need had already been accepted by the Inspector in determining the planning appeal relating to 09/0813/FUL in 2010 (as set out above). As such, the Council’s assessment of this application was based on its actual impact to the Green Belt and AONB in terms of its siting, design and access (i.e. as required by the tests previously set out at paragraph (v) of PPS7 and as contained in Saved Policy GB7 of the Local Plan).

8.1.11 In considering the application on this basis, the Council had to attach weight to the comments made by the Inspector in dismissing the appeal relating to application 09/1813/FUL (for the stationing of a mobile home as a temporary agricultural dwelling). Wherein, the Inspector raised concerns regarding the future expansion of the farm which would arise from a permanent residential presence at the site and the subsequent need for further buildings on site to accommodate the expanded enterprise, resulting in further harm to the Green Belt and AONB. This expansion would be possible because of the Inspector’s decision in 2010 (relating to application 08/2277/FUL) to quash condition 6 of planning permission 00/1196/FUL which had previously limited development on site. He stated:

*“Without a residential presence on site the maximum numbers are unlikely to be reached. However, all the planning permissions granted so far have been on the understanding that there would be strict control over the numbers of poultry units occupying the fields. Since control was effectively removed following the success of the enforcement appeal, there is no reason why the appellant should remove any of the temporary structures, nor anything to prevent him from adding more, both of which would be harmful to the AONB.”*

8.1.12 However, in considering application 10/2087/FUL for a mobile home which was approved, the Case Officer recognised that the application had been accompanied by a Section 106 Legal Agreement which would ensure the business was expanded in line with the business plan to ensure the increased bird numbers are met (as such justifying a residential mobile home on the site in terms of functional need), allowing regular monitoring of the site by the Council. The Section 106 would also:

* + - Result in the permanent removal of all temporary and mobile agricultural structures not amounting to development and prevent any new such structures being installed.
    - Detail the retention of 4 permanent mobile poultry houses and 3 further permanent poultry houses to be constructed (all granted on previous appeals).
    - Allow the retention of 4 existing portable feed silos and up to 3 further silos not exceeding 6 tons, not exceeding the ridge height of the poultry house to which it is adjacent and to be located within 5m of the building it is serving.
    - Allow the short term retention of 3 existing mobile poultry units and 4 brooder units in the paddock area with the 4 brooder units and aviaries to be removed within 18 months of the grant of planning permission.
    - Allow the 2 poly tunnels allowed on appeal to be erected within the paddock area but no further such structures.
    - Limit the size of the mobile home to that detailed on the approved plans.

8.1.13 Following implementation of the three remaining permanent poultry houses, the Section 106 Legal Agreement relating to 10/2087/FUL limits the number of structures on site to the following:

* + - A temporary mobile home used for residential purposes.
    - The stable block building which includes a hatchery.
    - An agricultural barn.
    - 7 permanent poultry houses.
    - 7 portable feed silos.
    - 2 poly tunnels.

8.1.14 In terms of the number of structures currently on site, the applicant is in compliance with the requirements of the Section 106 Legal Agreement attached to planning permission 10/2087/FUL.

8.1.15 Application 13/0544/FUL proposed to replace the temporary mobile home with a new permanent agricultural workers dwelling however following concerns over chicken numbers and the fact they did not correspond sufficiently with the business plan submitted at the time, this application was withdrawn.

8.1.16 Application 13/1345/FUL was submitted for the construction of a permanent agricultural workers dwelling in a revised location. This application was refused at the Planning Committee in October 2013 as set out at section 1.31. An appeal was lodged and subsequently dismissed by the Planning Inspector who concluded that:

‘*60. In accordance with the Framework, I attach substantial weight to the harm to the Green Belt by reason of the inappropriate nature of the development. I also attach substantial weight to the loss of openness of the Green Belt resulting from the proposed development. In accordance with paragraph 115 of the Framework, I attach great weight to the harm the landscape and scenic beauty of the Chilterns AONB. I am also mindful that the proposed development would be contrary to the development plan in all these respects.*

*61. Neither the functional need nor the financial basis for a permanent dwelling have been demonstrated, and consequently the proposed agricultural dwelling would not comply with the development plan in these respects. This also weighs significantly against the appeal proposal.*

*62. Against this I attach only moderate weight to the development and diversification of agriculture resulting from the appeal proposal. No other significant considerations in support of the proposed development have been advanced.*

*63. I therefore conclude that the harm by reason of inappropriateness, and any other harm, is not clearly outweighed by other considerations, such that the very special circumstances necessary to justify the development do not exist. Accordingly, I conclude that this appeal should be dismissed.’*

8.1.17 Following the refusal of application 13/1345/FUL a new planning application was submitted and approved for the retention of the temporary workers dwelling on site for a further three years (14/0034/FUL). This temporary permission expires in July 2017 with the associated Section 106 Legal Agreement requiring the removal of this temporary building by 17 October 2017.

8.1.18 A further application was submitted in August 2016 referenced 16/1675/FUL for a permanent dwelling on site which proposed the agricultural dwelling in the location of the existing fire damaged building (No.6). However, following concerns raised by Officers, the application was withdrawn in order for Officers to negotiate with the applicant on a new siting. A subsequent planning application referenced 17/0488/FUL was submitted in March 2017 which re-sited the dwelling in the location of the existing poly tunnels (No.11) located within the southern part of the site.

8.1.19 Application 17/0488/FUL was put forward to the Planning Committee held in June 2017 with the recommendation for approval however Members overturned the Officer recommendation and resolved to refuse the application after raising concerns that the location of the agricultural dwelling would not be in sight or sound of the chicken sheds and therefore could not fulfil its function. Members were not convinced that the functional and financial need had been adequately demonstrated and therefore the development was inappropriate within the Green Belt. The application was refused 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).*

8.1.20 Since refusal of17/0488/FUL the applicant has obtained a further temporary consent (3 years) under application referenced 17/1361/FUL and an updated Section 106 Legal Agreement has been completed and signed. The temporary consent was approved on the 30 November 2017 and the consent would expire on the 30 November 2020.

8.1.21 This current application seeks to address the concerns raised with application 17/0488/FUL and proposes to site the permanent dwelling in a location where it is considered to have better sight and sound of the chicken sheds. As mentioned in paragraph 3.1.2 the dwelling proposed under this current application would hold the same dimensions and be of the same appearance as the dwelling proposed under application 17/0488/FUL.

9.1.1 Impact on Green Belt

9.1.2 *Inappropriate Development*

9.1.3 The National Planning Policy Framework sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. The National Planning Policy Framework sets out that Green Belt serves five purposes:

* To check the unrestricted sprawl of large built-up areas;
* To prevent neighbouring towns merging into one another;
* To assist in safeguarding the countryside from encroachment;
* To preserve the setting and special character of historic towns; and
* To assist in urban regeneration by encouraging the recycling of derelict and other urban land.

9.1.4 Paragraph 87 of the NPPF sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

9.1.5 The construction of new buildings in the Green Belt is considered inappropriate however Paragraph 89 sets out six exceptions to inappropriate development which include:

* Buildings for agriculture and forestry;
* Provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;
* The extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
* The replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
* Limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan; or
* Limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green

9.1.6 Core Strategy Policy CP11 sets out that there is a general presumption against inappropriate development that would not preserve the openness of the Green Belt, or which would conflict with the purposes of including land within it.

9.1.7 Policy DM2 of the Development Management Policies LDD (adopted July 2013) sets out that approval will not be given for new buildings other than those specified in national policy and other relevant guidance. Further guidance on factors that will be considered in assessing applications for agricultural dwellings in the Green Belt is contained in Appendix 3.

9.1.8 The proposed dwelling would be related to the agricultural use of the land. However, the primary purpose of the building would be residential. As such, the building would not fall within any of the exceptions as set out in paragraph 89 of the NPPF and would constitute inappropriate development; a view supported by the Planning Inspector of the previous appeal APP/P1940/A/142213952 in relation to application 13/1345/FUL which proposed a permanent agricultural dwelling. The Planning Inspector in assessing whether the permanent dwelling proposed under that application was inappropriate development within the Green Belt commented:

“11. *Whilst I acknowledge that the dwelling now proposed is intended to support the agricultural use of the site, the building is clearly designed as a dwelling and is intended to be used primarily for residential purposes. This building and the associated garage/log store would therefore not fall within any of the exceptions set out in Paragraph 89 of the Framework and as such would constitute inappropriate development in the Green Belt.”*

9.1.9 The inspector also concluded with the following:

*“14. I conclude that the appeal proposal would be inappropriate development within the Green Belt, both in relation to the Framework as well as Policies CP11 of the Core Strategy and Policy DM2 of the Development Management Policies LDD. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.”*

9.1.10 As such, having regard to the Inspector’s comments the agricultural workers dwelling proposed would constitute inappropriate development which is, by definition harmful to the Green Belt and should not be approved except in very special circumstances.

9.1.11 *Actual Harm*

9.1.12 In addition to assessing whether the proposed development would constitute inappropriate development, it is necessary to assess whether the development causes actual harm to the openness of the Green Belt. Paragraph 79 of the Framework confirms that the essential characteristics of Green Belts are their openness and their permanence. Openness may be defined as the absence of development.

9.1.13 With regard to the agricultural dwelling proposed under application 13/1345/FUL and later dismissed at appeal, this dwelling was proposed to be located 50 metres to the north-west of the former stable block, permanent poultry house, and the temporary mobile home which are located along the southern boundary of the site. The Planning Inspector commented on this location and design of the proposed dwelling and said:

*“17. I accept that a number of buildings and structures are grouped together close to the southern boundary of the site. The buildings in this group include the former stable block, a permanent poultry house and the temporary mobile home. The proposed dwelling would be located on an area of sloping ground some 50 metres to the north-west of this group of buildings. Given this separation distance, I consider that the proposed dwelling could not be considered to fall within the envelope of this group of buildings. The proposed development would therefore extend the spread of development on the site. Significantly, it would result in the erection of a built structure in an area of the site currently devoid of built development.”*

*“18. The proposed dwelling would have a floor area of some 137sq. metres and a maximum height of some 7 metres. The design of the dwelling would include a steeply pitched main roof with gable ends, with projections to both sides. These side projections also feature steeply pitched roofs with gable ends, the ridge height of which is only slightly below the ridge height of the main roof. The appeal proposal also includes a garage log store of some 40sq. metres, with a steeply pitched gable roof of some 5.5 metres ridge height. Both of these buildings would be bulky structures that would significantly erode the openness of the Green Belt.”*

9.1.14 Whilst the introduction of a new permanent dwelling would erode the openness of the Green Belt, in comparison to the previously proposed locations for application 13/1345/FUL and the withdrawn application 16/1675/FUL (which proposed to locate the proposed dwelling where the existing fire damaged building currently exists), the proposed dwelling would be sited in the location of the agricultural barn (Building 7) which has extant permission allowed on appeal referenced APP/P1940/A/07/2054608/NWF. The below table shows the comparative dimensions of the agricultural barn and the proposed permanent dwelling:

|  |  |  |
| --- | --- | --- |
|  | **Agricultural Barn** | **Permanent Dwelling** |
| Depth | 12m | 12.6m |
| Width | 8.65m | 9.4m  (incl. 3.9m x 5m single storey projection) |
| Height | 5m | 6.4m |
| Footprint | 104sqm | 89sqm |
| Floorspace (Internal area) | 130sqm  (incl. first floor storage level) | 120sqm  (incl. first floor level) |

9.1.15 In allowing the appeal for the construction of the agricultural barn, the Planning Inspector stated the following:

“*11. Just as with the previous appeal, my concern too is with the view of the development from Moor Lane, from where there is a view of the rising ground on which the proposed building would be located. An issue is raised by the Council also as to visibility from more distant public footpaths within this field of view, but I find that not to present any real difficulty. Even without allowing for any other mitigation, the relevant distances are too great to make the building, or any part of it, more than just a relatively insignificant background element.*

*12. And at closer quarters, my judgement is that the proposed resiting, as compared with the appeal scheme to which I have referred, would be critical in overcoming the major difficulty identified in that case. Setting the building back into the farmyard, if by no more than some 20 m, would indeed reduce its prominence as an element seen on the overall rising ground sweeping up to it. Realistically, the building would not disappear, but such a construction can be an acceptable feature of the AONB if not unduly prominent by its siting or external appearance.*

*13. My judgement is, as I have indicated, that an acceptable siting is proposed. The bulk of the building would not be excessive, and its conventional pitched roof would be unobjectionable. Clad with functional unassuming materials as proposed, the building would not call undue attention to itself, but would replicate many modern agricultural buildings to be seen in the countryside, as well as the poultry houses already permitted on the farm. The design details are matters which could properly be controlled by condition.*

*14. On this basis, I conclude that the development at issue would not unduly harm the AONB. I have paid due regard also to all other factors, but I have found no further overriding objection to granting permission. I therefore decide accordingly in favour of the appeal scheme, subject, for the reasons given, to the conditions put forward by the Council, to meet this contingency.”*

9.1.16 It is noted that this application seeks a permanent agricultural workers dwelling which would have a height 1.4 metres greater than that of the agricultural barn allowed on appeal. However the proposed dwelling would have a reduced footprint in comparison to the barn and the residential curtilage of the proposed new dwelling would be enclosed by the existing extensive hedgerows along the north-western and south-eastern boundaries reducing the extent of residential incursion into the countryside. The appearance of the proposed dwelling with its pitched roof form and choice of materials would give the building a more traditional rural appearance. In addition, it would be contained within part of the site that has existing built form (Building 8) and in the vicinity of Building 5 which is sited on a higher land level. However, while the impact on Green Belt would be reduced over previous proposals, this does not overcome the harm arising from the inappropriateness of the proposed development and some actual harm as a consequence of residential development on the site.

9.1.17 Thus, it is important to consider whether any very special circumstances exist to outweigh the harm the development would have on the openness of the Green Belt by virtue of its inappropriateness and actual harm.

9.1.18 The NPPF deals with agricultural workers' dwellings (or more accurately rural workers' dwellings) at paragraph 55 and states:

‘*To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:*

*● the essential need for a rural worker to live permanently at or near their place of work in the countryside...’*

9.1.17 In relation to the assessment of new agricultural dwellings in the Green Belt Policy DM2 of the DMP LDD states:

‘*Within the Green Belt, except in very special circumstances, approval will not be given for new buildings other than those detailed in national and other relevant guidance. With regards to new dwellings for agricultural and/or forestry use applicants must demonstrate compliance to the tests detailed in Appendix 3’.*

9.1.18 Appendix 3 identifies that in some cases it may be essential for one or more people engaged in agricultural enterprises to live on or close to the site of their work. However, Appendix 3 makes it clear that it is essential that all applications for planning permission for new dwellings in the Green Belt are scrutinised thoroughly. In relation to the permanent agricultural dwellings Appendix 3 states:

*‘Permanent Agricultural Dwellings*

*New permanent dwellings will only be allowed to support existing agricultural activities on well-established agricultural units, providing:*

*i. there is a clearly established existing functional need;*

*ii. the need relates to a full-time worker, or one who is primarily employed in agriculture and does not relate to a part-time requirement;*

*iii. the unit and the agricultural activity concerned have been established for at least three years, have been profitable for at least one of them, are currently financially sound, and have a clear prospect of remaining so;*

*iv. the functional need could not be fulfilled by another existing dwelling on the unit, or any other existing accommodation in the area which is suitable and available for occupation by the workers concerned; and*

*v. other planning requirements, e.g. in relation to access, or impact on the countryside, are satisfied.*’

9.1.19 Although the references to a financial test and/or economic viability do not expressly appear in the NPPF the core requirement of these policies - that there is an essential need for permanent on-site accommodation - are in general conformity with the NPPF, and provide a reasonable basis for the following assessment.

10.1 The Functional Test

10.1.1 This topic was examined in detail by the Inspector during the appeal relating to application 13/01345/FUL where the Inspector considered that there was a functional need for an agricultural dwelling on site dependent on stocking numbers of a laying flock of 6,000 laying hens or 4,000 laying hens plus meat birds.

*“41. On this basis, I accept the evidence of the two agricultural consultants that there would be a functional need for one worker on the site provided that the flock was maintained at that level or above.”*

10.1.2 The Inspector also commented:

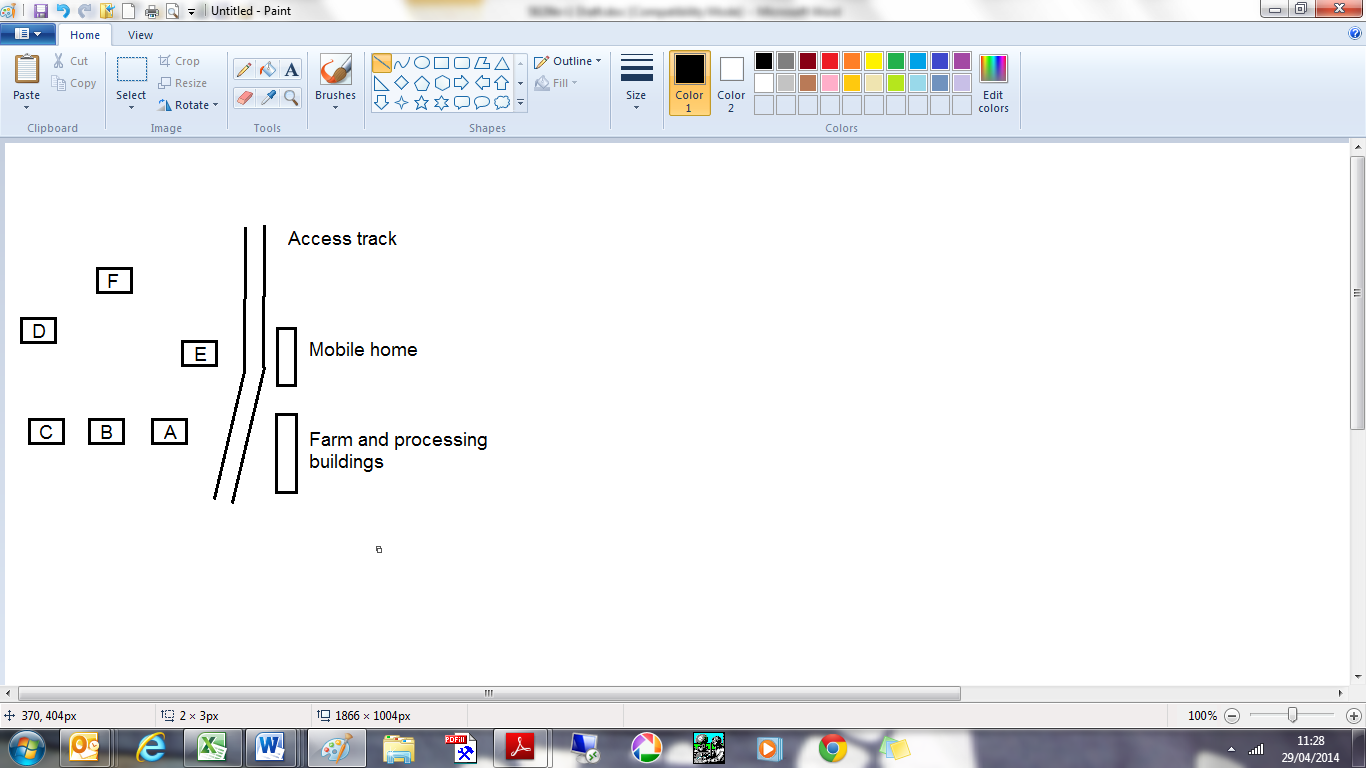
*“49. I note that Mr Norris lives close to the appeal site and the views expressed by some local residents that there is a consequently no need for a permanent dwelling on the site. It was explained at the Hearing that some eventualities, such as a failure in the electricity supply, could quickly result in a significant loss of stock. In such circumstances, I understand that a response time in the region of 30 minutes would be required to prevent this. The appeal site can be reached within that time period on foot from where Mr Norris currently lives and comfortably so with use of a vehicle. Nonetheless, I am not convinced that existing technology would provide sufficient warning for Mr Norris to travel to the site and rectify the problem within the critical time period, or that technology alone could deal with all the possible eventualities. In that sense, I accept that there would be some merit in a worker living on the site to cover such eventualities.”*

10.1.3 However, following inconsistency of stocking numbers provided by Mr Norris at an Employment Tribunal compared to the numbers provided as part of application 13/1345/FUL and as part of the subsequent appeal, in conjunction with the fact that some of the buildings on site were empty during the Inspector’s site visit and had been for long periods of time; the Inspector was not persuaded that there were consistently sufficient birds on site to justify a permanent residence on the site.

10.1.4 Since the appeal decision Mr Williams, the Council’s initial agricultural consultant who has been involved in assessing planning applications at The Mulberry Bush for accommodation since 2003, appraised Mr Norris’s business in September 2016 (in relation to the withdrawn application 16/1675/FUL) and undertook a further appraisal and inspection in May 2017 in connection with application 17/0488/FUL and commented the following:

*4. During my inspection in May 2017 I observed the same six permanent poultry houses on site (referred to as A – F, and shown in the sketch), which have a maximum stocking capacity of some 10,000 hens which comprised:*

* *House A which contained approximately 1,600 laying hens, housed since April 2017;*
* *House B which contained approximately 1,600 laying hens, housed since December 2016;*
* *House C which contained approximately 1,600 laying hens, housed since October 2016;*
* *House D had some 2,000 broilers of varying ages;*
* *House E was empty having been recently cleaned and sterilised and was awaiting re-stocking;*
* *House F was a gutted shell having caught fire last year. No cause of the fire has been established and although a full insurance payment has been made there are no plans to re-build it.*



1. *With regard to the broilers in House D, I note that the precise number of these birds is difficult to specify given the fluid nature of the business and the fact that approximately 700 day-old chicks are delivered to the farm each month but variable numbers are dispatched/sold depending on demand. During the site visit I was shown receipts for deliveries of day-old chicks and can confirm that, during the year to March 2017, 8,870 chicks were purchased.*
2. *With regard to the laying hens, I was shown receipts for deliveries of point-of-lay hens that corroborate hen numbers.*
3. *I was also provided with copies of receipts for chicken feed covering the twelve-month period March 2016 – February 2017, and observed regular monthly deliveries of layers and growers feed variably from £2,769 (September 2016) to £6,494 (May 2016); the 12-month, monthly average delivery value was £4,885. Based on a feed price of £250 per tonne and a feed intake of 130g per bird per day; this value of feed would have fed approximately 5,000 hens each month – and broadly accords with the stock numbers seen, taking account the variability of stock numbers, and the fact that some are broilers from day-old chicks to 10-week birds.*
4. *Thus (with the exception of House F) the built-form - and stock numbers - seen in 2017 accords with that seen in June 2016 and in 2013, and remains broadly in line with the forecast plans in 2009.*

10.1.5 In his appraisal of the functional test Mr Williams stated the following:

*“Last year (September 2016) I reported to the Council:*

“*19. In 2013 I reported that there was an essential need for on-site accommodation to provide for the need for some 6,400 laying hens plus 9,000 broilers.*

*20. KCC[[1]](#footnote-1) reported:*

*“Mr Williams visited the farm on 9th April 2014 and identified 4,800 laying hens and 2100 young chicks being reared on. Previously Mr Williams had seen records of 9600 table birds being reared per year, and assuming that a new batch of 700 is started every 4 or so weeks, that would be consistent with the numbers seen on site by Mr Williams in April 2014. I visited on 30th May and also saw similar numbers of birds. For each of the laying flocks I also saw documentary evidence of their purchase, which confirmed the number and age of each flock.*

*In terms of whether there is an essential need for a resident worker, I consider that there is such a need. This remains the case whether the laying flock is 4000 or 8000 birds, together with the rearing of flocks of young birds (arriving as day olds) under heat initially, and then on to meat bird size”.*

*21. However, the 2014 Planning Inspector was not persuaded that there was consistently, sufficient stock on the holding to meet the need.*

*22. Although Landscope has not provided any evidence to argue the point, I consider the Inspector’s findings to be unusual, and incorrect.*

*23. Farming is not an exact science. The number of birds on the farm in any one year will vary partly due to biological science, partly due to economics; but this is a substantial unit that has been operating for 10+ years; and always has more than 6,400 birds on the holding – within the mix of layers and broilers.*

*24. I remain of the opinion that there is an essential need for a key worker to live at Mulberry Farm to provide for the appropriate welfare of the birds*”.

*In 2017, I remain absolutely satisfied that there is an essential need for a key worker to be readily available at most times – and to live on site to provide for the welfare needs of 4,800 laying hens and variably approximately 1,500-2,000 broilers.”*

10.1.6 Whilst the Planning Inspector held some doubt over the stocking numbers when dismissing the appeal, the stocking numbers of laying hens and broilers has been consistent and was verified by Mr Williams on behalf of the Council under application 17/0488/FUL who considered that there is an essential need for a worker to live on the site.

10.1.7 With regard to this current planning application Mr Tony Kernon of Kernon Countryside Consultants provided a further appraisal of Mr Norris’ business and stated the following in his report:

*“15.* ***Essential Need****. In my opinion there is an existing essential need for a resident worker to operate the existing laying and rearing enterprises. There are large numbers of poultry on the holding, and to provide proper standards of animal welfare the stockman needs to live on site.*

*16. The livestock numbers have been validated. I agreed with the Applicant’s agent Sam Franklin, and the Council’s consultant Peter Williams. There is an established need for a resident worker.*

*17.* ***Full-time Worker****. The enterprise requires more than one full-time worker to be operated properly. The essential need relates to a full-time worker.*

*25. From the information submitted and the visit by Reading Agricultural Consultants on behalf of the Council, where bird numbers were corroborated, the Applicant has consistently maintained bird numbers above a level that necessitates a resident worker. Spot checks have been carried out to validate information provided by the Applicant. It is now almost three years since the Inspector’s investigations and comments (the Hearing was on 18th November 2014), and concerns expressed by him have now been met.”*

and concluded with the following:

*“30 This is a substantial and established business producing eggs and poultry meat. These are sold at Farmers’ Markets. There are 4,800 laying hens plus 1,500 – 2,000 broilers.*

*31 I remain of the opinion that such numbers give rise to an essential need for a worker to be resident on the holding.”*

10.1.8 Therefore, it is considered that functional test for an agricultural workers dwelling has been met.

10.2 Appropriateness of Size to Need Demonstrated

10.2.1 In determining the issue of whether the size of the dwelling proposed is appropriate to the need demonstrated, regard is had to an appeal decision at Bullscroft Farm (11/2050/FUL) which is considered to be directly relevant for the following reasons:

- The appeal decision relates to a site which is located within the Green Belt and Chilterns AONB, less than 2 miles from the application site.

- The size of the agricultural dwelling proposed and the enterprise to which it relates are similar to this application.

10.2.2 At the Informal Hearing in relation to the Bullscroft Farm appeal, the Inspector recognised that where the need for an agricultural dwelling is established, it should also be determined whether the size of the dwelling proposed is appropriate to the need demonstrated.

10.2.3 The Council’s position in relation to the size of proposed dwelling at Bullscroft Farm (size details set out at 10.1.6 below) relative to the need for one agricultural worker was as follows:

*The appellant’s case is that the functional requirement is for one permanent worker to be present on site at all times. It is not considered that a dwelling providing three bedrooms, walk-in wardrobes, a large landing area, one en-suite bathroom, a separate bathroom, a large kitchen/dining room and living area would be proportionate or appropriate to that need. Whilst it is understood that the appellant’s agricultural worker has a family, it is considered that a dwelling of a lesser size could reasonably meet any such need.*

*…the proposed dwelling is considered to be too large, particularly in terms of its two storey (8m) height and total floor area (approx. 148 square metres). Whilst it is acknowledged that the proposed dwelling would replace an existing structure, it would be considerably larger both in terms of its floor area and height.*

*The proposed dwelling would therefore be detrimental to the openness and rural character of the Metropolitan Green Belt, contrary to Policy CP11 of the Core Strategy (adopted October 2011)…and national government guidance as contained within the NPPF.*

10.2.4 In determining the appeal, however, the Inspector disagreed with the Council, stating:

*I note the view of the Council and others that the proposed dwelling would be unnecessarily large. However, it is reasonable that the dwelling should be large enough to accommodate not only the employee but also their immediate family, and that it should have the flexibility to accommodate future users with differing requirements.*

*The dwelling now proposed, with three bedrooms, a kitchen/breakfast room, lounge and study, would offer a good standard of accommodation but would not be excessive. A second bathroom and built-in wardrobes are features commonly found in modern housing, and restricting their inclusion here would not serve any proper purpose. Neither would these add significantly to the building’s volume. In any event, given the appeal site’s well-screened location, the dwelling’s size would have little effect on its impact.*

*The height would be broadly similar to the existing farm building nearby, which would remain. The external design seems to me well-proportioned, well composed, and unobjectionable.*

*In all these respects, the proposed development seems to me to comply with CS Policy CP12.*

10.2.5 On this basis, it was considered that the size of the dwelling was proportionate to the need demonstrated. The Inspector also considered that the dwelling would not result in any harm to the openness and rural character of the Green Belt. It is therefore relevant to consider how the dwelling subject of the Bullscroft Farm appeal (located within the Chilterns AONB, Green Belt and in proximity to the application site) relates to the development subject of this application:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Application Dwelling** | | **Bullscroft Farm Dwelling** | |
| **Height** | 6.8m | | 8m | |
| **Total Floor Area** | 120 sqm | | 140 sqm | |
| **Materials** | Roof | Clay Tiles | Roof | Clay Tiles |
| Walls | Brick Plinth & Timber Cladding | Walls | Brick & Flint Panels |
| Windows | Timber | Windows | Timber |

10.2.6 The dwelling currently proposed is smaller than that subject of the Bullscroft Farm appeal and is considered appropriate to the need demonstrated on the application site (that being for a permanent on site dwelling).

11.1 The Financial Test

11.1.1 In relation to the financial test associated with the erection of a permanent agricultural dwelling Appendix 3 of the DMP LDD states:

*‘New permanent accommodation cannot be justified on agricultural grounds unless the farming enterprise is economically viable. A financial test is necessary for this purpose, and to provide evidence of the size of dwelling which the unit can sustain. In applying this test, we will take a realistic approach to the level of profitability, taking account of the nature of the enterprise concerned.’*

11.1.2In the previous appeal decision relating to the refusal of 13/1345/FUL the Inspector commented:

“52. *I also have concerns about the evidence presented by the appellant in relation to the profitability of the enterprise over the previous three years and the prospects of it remaining profitable. The appellant provided financial information for the previous three years to Mr Kernon, who confirms that he has seen evidence to validate those figures. The figures presented set out the income received for both farm profit and the profit received from the sale of street food. These show a significant growth in profits over the previous three years particularly that derived from the street food part of the business.*

*53. The figures in relation to income are presented in some detail, and are broken down into separate income streams for the main elements of the business. The information in relation to street food profit is further broken down in a separate entry and also includes a detailed break-down of expenditure relating to this element of the business.*

*54. However, the information on expenditure in the overall business is presented in much less detail. Information on day-to-day expenditure is entirely encompassed within a single entry titled ‘Purchase Records’. Mr Norris explained that this is his standard method of presenting his accounts, but in the absence of information on individual items of expenditure I cannot be certain that I have an accurate picture of the total costs associated with this business. It follows that I am unable to assess the typical running costs of the operation, and therefore whether the accounts presented accurately reflect the profitability of the agricultural business.*

*55. My concerns in this respect were heightened when, during the course of discussion at the Hearing, it transpired that Mr Norris has taken out a sizeable loan in relation to the business. Although Mr Norris explained that repayments on this loan are included under ‘Purchase Records’, given the lack of detail in relation to expenditure in these accounts I am not able to assess the impact of this loan on the continued profitability of the operation.*

*56. In addition to the costs associated with running the agricultural business, no information has been provided in relation to the building costs for the proposed dwelling. In addition to the standard construction costs for the dwelling and garage, including the sustainability measures proposed, the proposed development would require significant ground excavation and levelling. No information has been provided to show how these costs would be absorbed by the agricultural business. I accept that the appellant may intend to finance this separately but planning permission runs with the land and it is therefore necessary to show how the construction of the dwelling could be funded by the agricultural business if necessary.*

*57. It follows from the above that I am not in a position to properly assess whether the agricultural activity has been profitable for at least one of the previous three years and has a clear prospect of remaining so. I therefore consider that the financial basis for a permanent dwelling has not been demonstrated.”*

11.1.3 The accounts were assessed by Mr Williams as part of his report in connection with application 17/0488/FUL and was provided with accounts through to 2015/16 and reported the following:

‘*17. I have been provided with copies of the farm business accounts to March 2016 and can report that the farm, yet again, generated profits well in excess of the minimum wage and comfortably meets the financial test.*

*18. This remains exactly as I reported in 2013 and 2014; and accords with the second opinion provided by KCC for the Council in 2014.*

*19. As I consider business accounts to be commercially sensitive and should not be made generally available without the express consent of the proprietor (such as the above data which was provided by the appellant for a Planning Hearing) I cannot report in detail on the profitability of the business. I note, however, that in both 2015 and 2016 the income and expenditure exceeded the above figures but resulted in a marginally lower profit.*

*20. The reported profit c.£35,000 in 2016 still exceeded the minimum wage by a considerable margin, leaving ample funds to cover a return on investment and the build-cost of the dwelling (albeit much of this will be covered from saved reserves).*

*21. In such circumstances, the financial test is met’*

11.1.4 The current application is supported by up-to-date accounts of the existing enterprise which Mr Kernon assessed and stated the following:

’*18. Financial Viability. The financial information presented in 2014 was scrutinised carefully. I, for example, visited the farm and asked for validating records picked at random, and all records matched. There is no reason to doubt the accuracy of the financial results.*

*19. Those results show profits as follows.*

*Table KCC1: Profits Over Time*

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Financial Year** | **12/13** | **13/14** | **14/15** | **15/16** | **16/17** |
| Profit | 22,030 | 33,034 | 31,658 | 35,155 | 40,754 |

*20 This is clear and consistent evidence that this is a financially viable and sustainable enterprise.”*

Mr Kernon commented further in his report:

*“32 The farm has produced consistent and generally increasing profits, with profits of between £31,000 and £41,000 achieved in each of the last four years. The enterprise is financially viable and sustainable.*

*33 In connection with an application in May 2017 Mr Williams from Reading Agricultural Consultants visited the farm and validated financial records. Accordingly there is no reason to doubt the validity of the financial data provided.”*

11.1.4 Both Mr Williams in relation to application 17/0488/FUL and Mr Kernon in review of this current application confirm that the existing enterprise meets the financial tests and that long term viability has been demonstrated. The Planning Inspector’s concerns that a financial basis for a permanent dwelling was not demonstrated when dismissing the appeal in relation to 13/1345/FUL is a material consideration, however the Agricultural Consultants have confirmed that the current evidence and figures provided by Mr Norris demonstrate that long term viability of the enterprise could be achieved. The agricultural activity has been established on the site and the current figures show that the unit has been profitable for at least one year. Mr Williams confirmed that the recorded profit in 2016 of around £35,000 exceeded the minimum wage by a considerable margin leaving ample funds to cover a return on investment and the build-cost of the dwelling and Mr Kernon considered that there is no reason to doubt the validity of the financial data provided.

11.1.5 The Planning Committee queried the retail element on site as this was not evident at the time of their site visit in assessing application 17/0488/FUL. Mr Kernon was asked to comment on these concerns as part of his review of Mr Norris’ business and commented the following:

“*27. I have no concerns about the retail element of the business. If a farmer sells direct to the public from the farm gate, a farm shop or by internet sales, that is part of the agricultural business. Some farmers attend Farmers’ Markets, as that is a way of increasing margins. In this case the Applicant attends 450 Farmers’ Markets per year. That helps the profit margins but does not alter the agricultural nature of the business, which produces eggs and poultry meat.”*

11.1.5 Thus, it is considered that in addition to the demonstrated functional need for a permanent agricultural dwelling on the site, the current enterprise meets the financial tests as set out in Appendix 3 of the Development Management Policies LDD.

11.1.6 The development would result in the creation of a permanent dwelling on Green Belt land, thus, any planning permission would be solely on the basis that the agricultural use would have long term viability. It is considered that sufficient evidence has been submitted to demonstrate that the existing enterprise has long term viability potential and there is a functional need for the dwelling as proposed on the site to support the enterprise. As under previous applications, it is accepted that there are no other properties which could meet the identified need. Thus, sufficient evidence has been submitted to constitute very special circumstances which would outweigh the harm of the development on the Green Belt arising from its inappropriateness and actual harm. The third party concerns raised by comments regarding the long term use of the dwelling for agricultural occupancy are noted and the long term use is a consideration, however, the application has been considered in relation to the information submitted which demonstrates that the farm currently supports a viable agricultural use. Thus, a reason for refusal could not be justified on the presumption that the dwelling would not be used for agricultural occupation in the future and a condition would require that the dwelling is only occupied as such. Thus, the proposed development would be in accordance with Policy CP11 of the Core Strategy and Policy DM2 and Appendix 3 of the Development Management Policies LDD.

11.1.7 However a Section 106 Legal Agreement would be required to exert future controls on the number of permanent poultry houses on site. This has been prepared by the Solicitor to the Council in agreement with Mr Norris and was executed on the 27th November 2017 with restrictions on temporary structures or mobile structures; number of feed silos on site; restrictions on mobile homes and caravans on site; controls on the operations of the site and finally the removal of Permitted Development Rights under Class R (Agricultural buildings to a flexible commercial use) and Class S (Agricultural buildings to state-funded school or registered nursery) which may not otherwise require planning permission.

12.1 Impact on Chilterns ANOB

12.1.1 Policy CP9 of the Core Strategy (adopted October 2011) states that the priorities for Green Infrastructure focus on conserving and enhancing the following key assets and the linkages between them:

* The corridors of the River Chess, Colne and Gade and the Grand Union Canal
* The Chilterns Area of Outstanding Natural Beauty
* The Colne Valley Park
* The District’s Sites of Specific Scientific Interest, Local Nature Reserves, wildlife sites, key biodiversity habitats, species and areas identified in the Hertfordshire Biodiversity Action Plan and heritage assets and landscape character within areas of Green Infrastructure.

12.1.2 Policy DM7 of the Development Management Policies LDD states that in considering proposals for development within or near the Chilterns Area of Outstanding Natural Beauty; the Council will support development unless the proposal would:

* Fail to conserve and/or enhance the special landscape character and distinctiveness of the AONB by reason of the siting, design or external appearance of, or the type or form of, development
* Detracts from the setting of the AONB and has an adverse impact on views into and out of the area
* Detracts from the public enjoyment of the AONB landscape.

12.1.3 The Chilterns Conservation Board (CCB) were consulted on the application but provided no response. Nevertheless the use of clay tiles, stained timber cladding and a brick plinth will be more redolent of a rural building however it is suggested that a condition requiring samples and details are submitted to and approved in writing by the Local Planning Authority.

13.1 Design and Impact on Character

13.1.1 Policy CP1 of the Core Strategy seeks to promote buildings of a high enduring design quality that respect local distinctiveness and Policies CP3 and CP12 of the Core Strategy set out that development should make efficient use of land but should also *'have regard to the local context and conserve or enhance the character, amenities and quality of an area'*.

13.1.2 In terms of new residential development, Policy DM1 of the Development Management Policies LDD advises that the Council will protect the character and residential amenity of existing areas of housing from forms of new residential development which are inappropriate for the area. Policy DM1 states that:

*‘Development will only be supported where it can be demonstrated that the proposal will not result in:*

1. *Tandem development*
2. *Servicing by an awkward access drive which cannot easily be used by service vehicles*
3. *The generation of excessive levels of traffic*
4. *Loss of residential amenity*
5. *Layouts unable to maintain the particular character of the area in the vicinity of the application site in terms of plot size, plot depth, building footprint, plot frontage width, frontage building line, height, gaps between buildings and streetscape features (e.g. hedges, walls, grass verges etc.)’*

13.1.3 The proposed dwelling would not result in a tandem form of development and would be served by an existing farm track which is accessed from Dawes Lane. The proposal is for the construction of an agricultural worker’s dwelling that would contain three bedrooms which is not considered to generate excessive levels of traffic. The proposed development would not cause the loss of residential amenity and given the location of the site there is no uniform character to maintain. The proposed dwelling would be set well back from Dawes Lane and would be screened from view from the highway by the existing woodland area aligning the eastern part of the site. The proposed dwelling would have a traditional rural appearance would not therefore cause harm to the character of the area.

14.1 Impact on Residential Amenity

14.1.1 Policy CP12 of the Core Strategy states that development should *'protect residential amenities by taking into account the need for adequate levels and disposition of privacy, prospect, amenity and garden space.'* Policy DM1 and Appendix 2 of the DMP LDD set out that residential development should not result in loss of light to the windows of neighbouring properties nor allow overlooking, and should not be excessively prominent in relation to adjacent properties.

14.1.2 Given the relatively isolated location of the application site, it is not considered that the proposed development would have a detrimental impact on neighbouring properties outside of the site.

14.1.3 The development would therefore not result in harm to the residential amenities of neighbouring occupiers and the development would be acceptable in this regard in accordance with Policy CP12 of the Core Strategy and Policy DM1 and Appendix 2 of the DMP LDD.

15.1 Amenity Space

15.1.1 Policy CP12 of the Core Strategy states that development should take into account the need for adequate levels and disposition of privacy, prospect, amenity and garden space. The Design Criteria at Appendix 2 of the Development Management Policies LDD set out that a three bedroom dwelling should provide 84sq. metres of amenity space.

15.1.2 The submitted site plan indicates that the proposed dwelling would be enclosed by the existing hedgerow along the north-western and south-eastern boundaries and the existing post and rail fence along the northern boundary which would avoid the need for additional urbanising boundary treatment to the rear garden when viewed from the open landscape.

15.1.3 The submitted plans do not indicate the land within the curtilage which is to be designated as private amenity space, however it is considered that sufficient amenity space would be provided within the curtilage of the site.

16.1 Highways, Parking & Access

16.1.1 Policy CP10 of the Core Strategy requires development to demonstrate that it will provide a safe and adequate means of access.

16.1.2 It is proposed to utilise the existing access point to The Mulberry Bush from Dawes Lane to serve the dwelling. The use of the existing access and farm track is considered acceptable and the proposed development is not expected to result in any significant detrimental impact to the safety and operation of the surrounding highway network.

16.1.3 Policy DM13 of the DMP LDD requires development to make provision for parking in accordance with the parking standards set out at Appendix 5 of the same document. Appendix 5 sets the parking requirement for a three bedroom dwelling as 2.25 spaces per dwelling (2 assigned spaces).

16.1.4 The submitted plans do not indicate the provision for parking within the curtilage of the permanent dwelling, however as with the amenity space it is considered that the curtilage of the permanent dwelling is sufficient to accommodate an area of parking and further details can be requested through condition.

17.1 Landscaping & Trees

17.1.1 Policy DM6 of the Development Management Policies LDD sets out that development proposals should seek to retain trees and other landscape and nature conservation features, and that proposals should demonstrate that trees will be safeguarded and managed during and after development in accordance with the relevant British Standards.

17.1.2 There are no trees of particular amenity value within the site which would be impacted by the development. However, a condition would require full details of hard and soft landscaping to ensure the garden is appropriately landscaped and managed.

18.1 Sustainability

18.1.1 Policy DM4 of the DMP LDD states that from 2016, applications for new residential development will be required to demonstrate that the development will meet a zero carbon standard (as defined by central government). However, the Government is yet to provide a definition for zero carbon and the Council is therefore continuing to apply the 2013 requirements, i.e. applicants will be required to demonstrate that development will produce 5% less carbon dioxide emissions than Building Regulations Part L (2013) requirements having regard to feasibility and viability.

18.1.2 The application has been accompanied by an Energy Statement prepared by Darren Evans dated 29 March 2016. The Energy Statement provides detail to show that the proposed dwelling would provide a 10.3% improvement over Building Regulations requirements.

18.1.3 The development would therefore accord with the sustainability policies and targets of Policy CP1 of the Core Strategy and Policy DM4 of the DMP LDD.

19.1 Affordable Housing & Infrastructure Contributions

19.1.1 Policy CP4 of the Core Strategy (adopted October 2011) requires that affordable housing is provided on sites with a net gain of one dwelling.  The proposed development is for an agricultural dwelling which is a form of affordable housing providing accommodation for a rural worker.  On this basis Section 106 contributions and affordable housing contributions for the site are not being sought.

20.1 Wildlife & Biodiversity

20.1.1 Section 40 of the Natural Environment and Rural Communities Act 2006 requires Local Planning Authorities to have regard to the purpose of conserving biodiversity. This is further emphasised by regulation 3(4) of the Habitat Regulations 1994 which state that Councils must have regard to the strict protection for certain species required by the EC Habitats Directive. The Habitats Directive places a legal duty on all public bodies to have regard to the habitats directive when carrying out their functions.

20.1.2 The protection of biodiversity and protected species is a material planning consideration in the assessment of this application in accordance with Policy CP9 of the Core Strategy and Policy DM6 of the Development Management Policies LDD. National Planning Policy requires Local Authorities to ensure that a protected species survey is undertaken for applications where biodiversity may be affected prior to the determination of a planning application. Hertfordshire Ecology were consulted on the application and raised no objection to the proposal.

21.1 Refuse & Recycling

21.1.1 Policy CP1 of the Core Strategy states that development should provide opportunities for recycling wherever possible. Policy DM10 of the DMP LDD sets out that adequate provision for the storage and recycling of waste should be incorporated into proposals and that new development will only be supported where the siting or design of waste/recycling areas would not result in any adverse impact to residential or workplace amenities, where waste/recycling areas can be easily accessed (and moved) by occupiers and waste operatives and where there would be no obstruction to pedestrian, cyclist or driver sight lines.

21.1.2 There is an existing temporary dwelling on the wider site. With regard to waste collection for the proposed dwelling the submitted plans do not indicate a location for bin storage within the site. To limit the impact on the Green Belt, it is considered appropriate to require full details of bin storage areas to be submitted by way of condition.

22.1 Removal of Permitted Development Rights

22.1.1 Notwithstanding the above analysis, the development (if permitted) would result in the creation of an area of residential curtilage which would not be restricted by the 1936 Article 4 Direction removing agricultural permitted development rights. It is therefore necessary to consider removal of residential permitted development rights. On this point, paragraph 017 of the National Planning Practice Guidance states:

*Conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015, so that it is clear exactly which rights have been limited or withdrawn. Area wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.*

22.1.2 Considering the highly sensitive location of the site within the Green Belt and Chilterns AONB, along with the development existing on site and that permitted, it is considered that exceptional circumstances exist to justify removal of permitted development rights. This will allow the Council to adequately control further development of this part of the site in the interests of preserving the openness and rural character of the Green Belt and Chilterns AONB.

23.1 Summary:

23.1.1 While previous refusals on the site are noted, the applicant is considered to have demonstrated a functional and financial need for a permanent agricultural dwelling. Furthermore, the Council is satisfied that the size of the dwelling proposed is appropriate to that need. For reasons demonstrated, the siting and design is also considered to be acceptable. Considering these factors, the dwelling is not considered to result in harm to the openness and rural character of the Green Belt or Chilterns AONB. Furthermore, this recommendation is made subject to the completion of a Section 106 agreement controlling the future use and development of the site. The proposal would therefore comply with Policies CP1, CP2, CP3, CP4, CP9, CP10, CP11 and CP12 of the Core Strategy (adopted October 2011), and Policies DM1, DM2, DM4, DM6, DM7, DM8, DM9, DM10, DM13 and Appendices 2, 3 and 5 of the Development Management Policies LDD (adopted July 2013).

24.1 **Recommendation**

24.1.1 That PLANNING PERMISSION BE GRANTED subject to the following conditions:-

C1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In pursuance of Section 91(1) of the Town and Country Planning Act 1990 and as amended by the Planning and Compulsory Purchase Act 2004.

C2 The development hereby permitted shall be carried out in accordance with the following approved plans: 1246.01.01 REV-E, 1246.03.01 REV-D, 1246.03.02 REV-B, 1246.03.03 REV-B, 1246.EX.01, 1246.PR.01 and TRDC 001 (Location Plan).

Reason: For the avoidance of doubt, in the proper interests of planning and to protect the openness and rural character of the Metropolitan Green Belt and the Chilterns Area of Outstanding Natural Beauty, in accordance with Policies CP1, CP2, CP3, CP4, CP9, CP10, CP11 and CP12 of the Core Strategy (adopted October 2011) and Policies DM1, DM2, DM4, DM6, DM7, DM8, DM9, DM10, DM13 and Appendices 2, 3 and 5 of the Development Management Policies LDD (adopted July 2013).

C3 Prior to commencement of the development, a construction management plan to include details of the proposed parking area for contractors, sub-contractors and delivery vehicles, and methods of wheel washing during the construction programme shall be submitted and approved by the Local Planning Authority. The approved scheme shall be adhered to for the duration of the works.

Reason: This is a pre-commencement condition to minimise danger, obstruction and inconvenience to users of the highway in accordance with Policy CP10 of the Core Strategy (adopted October 2011).

C4 Before the building operations hereby permitted are commenced, samples and details of the proposed external materials shall be submitted to and approved in writing by the Local Planning Authority and no external materials shall be used other than those approved.

Reason: This is a pre-commencement condition to ensure that the external appearance of the building is satisfactory in accordance with Policies CP1, 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).

C5 No development shall take place until details (including sections) of the existing and proposed site levels and the proposed finished floor levels of the proposed building have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: This is a pre-commencement condition in order to ensure a satisfactory form of development relative to surrounding buildings and landscape and to meet the requirements of 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).

C6 No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme of hard and soft landscaping, which shall include the location of all existing trees and hedgerows affected by the proposed development, and details of those to be retained, together with a scheme detailing measures for their protection in the course of development.

All hard landscaping works required by the approved scheme shall be carried out and completed prior to the first occupation of the development hereby permitted. All soft landscaping works required by the approved scheme shall be carried out in accordance with a programme to be agreed before development commences and shall be maintained 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.

Reason: This is a pre-commencement condition 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).

C7 The development shall not commence until details of space to be laid out within the site in for two cars to be parked has been submitted to and approved in writing by the Local Planning Authority. The parking spaces shall be constructed in accordance with the approved plans prior to the first occupation of any part of the development hereby permitted and shall thereafter be kept permanently available for the use of residents and visitors to the site.

Reason: This is a pre-commencement condition 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).

C8 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).

C9 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).

C10 The development shall not be occupied until the energy saving measures detailed within the Energy Statement prepared by Darren Evans dated 29 March 2016 submitted as part of the application are incorporated into the approved development.

Reason: To ensure that the development meets the requirements of Policy CP1 of the Core Strategy (adopted October 2011) and Policy DM4 of the Development Management Policies LDD (adopted July 2013).

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).

25.1 **Informatives**

I1 With regard to implementing this permission, the applicant is advised as follows:

All relevant planning conditions must be discharged prior to the commencement of work. Requests to discharge conditions must be made by formal application. Fees are £97 per request (or £28 where the related permission is for extending or altering a dwellinghouse or other development in the curtilage of a dwellinghouse). Please note that requests made without the appropriate fee will be returned unanswered.

There may be a requirement for the approved development to comply with the Building Regulations. The Council's Building Control section can be contacted on telephone number 01923 727132 or at www.threerivers.gov.uk for more information and application forms.

Community Infrastructure Levy (CIL) - If your development is liable for CIL payments, it is a requirement under Regulation 67 (1) of The Community Infrastructure Levy Regulations 2010 (As Amended) that a Commencement Notice (Form 6) is submitted to Three Rivers District Council as the Collecting Authority no later than the day before the day on which the chargeable development is to be commenced. DO NOT start your development until the Council has acknowledged receipt of the Commencement Notice. Failure to do so will mean you will lose the right to payment by instalments (where applicable), lose any exemptions already granted, and a surcharge will be imposed.

Care should be taken during the building works hereby approved to ensure no damage occurs to the verge or footpaths during construction. Vehicles delivering materials to this development shall not override or cause damage to the public footway. Any damage will require to be made good to the satisfaction of the Council and at the applicant's expense.

Where possible, energy saving and water harvesting measures should be incorporated. Information on this is also available from the Council's Building Control section. Any external changes to the building which may be subsequently required should be discussed with the Council's Development Management Section prior to the commencement of work.

I2 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.

I3 The applicant is reminded that the Control of Pollution Act 1974 stipulates that construction activity (where work is audible at the site boundary) should be restricted to 0800 to 1800 Monday to Friday, 0900 to 1300 on Saturdays and not at all on Sundays and Bank Holidays.

I4 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.

1. Kernon Countryside Consultants [↑](#footnote-ref-1)