

Delegated Report

Planning Ref: 24/00757/CONDIT

Applicant: Mr Chris Mee

Ward: Cadeby Carlton M Bosworth & Shackerstone

Site: Barton Hill Fields Farm, Main Street, Barton in the Beans

Proposal: Variation of condition 3 attached to planning permission 16/00640/FUL. To allow permitted development rights to be reinstated.

1. Recommendations

- 1.1. Refuse planning permission for the reasons at the end of this report.

2. Planning application description

- 2.1. This application seeks to remove Condition 3 of planning permission 16/00640/FUL, which approved the retention of a log cabin for permanent occupation as a dwelling. Condition 3 removed permitted development rights and was worded as follows:

Notwithstanding the provisions of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that order with or without modification) the dwellinghouse hereby approved shall not be extended without the grant of planning permission for such extensions by the Local Planning Authority.

Reason: To ensure the dwelling remains of a size and scale appropriate to the proper functioning and needs of the rural enterprise in accordance with Policy DM5 of the Site Allocations and Development Management Policies DPD.

3. Description of the site and surrounding area

- 3.1. The application site measures 4.5 hectares and is located off Congerstone Lane/Main Street, to the west of the settlement of Barton in the Beans, it consists of paddocks with stable buildings and a manege located to the western end of the site.
- 3.2. The timber log cabin is single storey and set within large grounds, located to the east of the stable buildings, and measures 13.6m in length, 6.1m in width, with an eaves height of 2.3m and a ridge height of 3.2m. It is simple in its appearance and is considered to be in keeping with its rural surroundings.
- 3.3. The land falls gently from east to west and from south to north and is screened by mature hedges. The site is accessed along a track which runs parallel with a bridleway (S80).

4. Relevant planning history

16/00640/FUL

- Retention of log cabin for permanent occupation as a dwelling
- Permitted

- 02.09.2016

15/00550/FUL

- Erection of six stables and tack room
- Permitted
- 07.07.2015

13/00910/CONDIT

- Variation of Condition 1 of planning permission 10/00920/FUL to allow siting of temporary occupation dwelling for an additional three years
- Permitted
- 10.12.2013

10/00920/FUL

- Siting of a temporary occupational dwelling (revised application)
- Permitted
- 02.03.2011

5. Publicity

- 5.1. There are no neighbours in the vicinity, however a site notice has been erected at the site access. No representations have been received.

6. Consultation

- 6.2. Shackerstone Parish Council – No comments received.

7. Policy

- 7.1. Core Strategy (2009)
- Policy 13: Rural Hamlets
- 7.2. Site Allocations and Development Management Policies DPD (SADMP) (2016)
- Policy DM1: Presumption in Favour of Sustainable Development
 - Policy DM4: Safeguarding the Countryside and Settlement Separation
 - Policy DM5: Enabling Rural Worker Accommodation
 - Policy DM10: Development and Design
- 7.4. National Planning Policies and Guidance
- National Planning Policy Framework (NPPF) (2023)
- 7.5. Other relevant guidance
- HBBC Good Design Guide (2020)

8. Appraisal

- 8.1. It is considered that the key issues in the determination of this application are:
- Application of Planning Condition 3 of 16/00640/FUL
- 8.2. The principal issue in determining the application is whether the inclusion of Condition 3 attached to 16/00640/FUL is justified. Conditions should only be

imposed where they are necessary and reasonable, as well as enforceable, precise and relevant both to planning and to the development to be permitted. This is set out in the Planning Practice Guidance (PPG). These six tests should all be complied with to make the addition of the condition acceptable.

- 8.3. When determining whether a condition is necessary it should be assessed whether planning permission would have to be refused if the requirements of that condition were not imposed. Conditions should be tailored to address specific planning considerations. In this case the condition was added to ensure that the dwelling remains of a size and scale appropriate to the proper functioning and needs of the rural enterprise, in accordance with Policy DM5 of the SADMP.

- 8.4. DM5 states:

To protect its intrinsic value, beauty and open character, the countryside will first and foremost be safeguarded from inappropriate development which includes the erection of new isolated homes. The provision of rural worker accommodation is however considered an exception where the following special circumstances can be demonstrated:

a) It is essential for one or more workers to be readily available at most times for the proper functioning of the rural enterprise and the worker(s) are in full time, permanent employment which directly relates to the rural enterprise; and prospect of remaining so; and

b) The rural enterprise is economically sustainable and has a clear

c) There are no available existing dwellings or buildings suitable for conversion to residential on the site of the enterprise or within the local area; and proper functioning and needs of the rural enterprise.

d) The proposed dwelling is of a size and scale appropriate to the Dwellings permitted under this policy will be subject to an occupancy condition restricting its occupation to a person who is directly employed by the rural enterprise on a permanent full-time basis.

- 8.5. The existing dwelling was originally approved as a rural worker dwelling and will continue to operate as such. Therefore, Policy DM5 continues to be relevant to this case. Permission 16/00640/FUL for the original rural worker dwellings was accompanied by an Agricultural Consultant Appraisal (Reading, August 2016). In paragraph 4.09 of the appraisal, it states:

The enterprise is sustainable but at a modest level. The cost of the log cabin and stabling has already been absorbed, but it is doubtful that the enterprise would, at present, be able sustain the cost of a conventional dwelling, or off-site accommodation, were it available.

- 8.6. This confirms that, when originally approved, the enterprise would be unlikely to be able to sustain the cost of a conventional dwelling. The LPA considers that removing Condition 3 of 16/00640/FUL would allow the existing dwelling to be extended to the point that it could be considered to be the size of a conventional dwelling, without evidence to suggest that the enterprise and its sustainability would be commensurate to this scale of dwelling.

- 8.7. A condition can be added if the person carrying out the development can reasonably be expected to comply with it. If not, subsequent enforcement action is likely to fail on the ground that what is required cannot reasonably be enforced. In this case the condition is not unreasonable as the applicants can easily comply with it by not carrying out extensions to the extent permitted within Schedule 2: Part 1 of The Town and Country Planning (General Permitted Development) Order 1995 as amended.
- 8.8. The Applicant did not originally submit any supporting evidence to support the assertion that the enterprise is operating at a level which is commensurate with the potential increase in scale of the associated dwelling, which if PD rights were to be re-instated, would be up to 8m for a rear extension and extension of up to half the width of the original house.
- 8.9. Evidence submitted by the Applicant during the determination of the application argues that Policy DM5 only relates to new dwellings and is therefore no longer relevant in this case. The Applicant also asserts that evidence regarding the economic sustainability of the enterprise is not required, as the enterprise has been operating for 16 years, thus proving its long-term sustainability. The LPA disagrees with this assertion, as an enterprise does not necessarily have to grow to remain viable, therefore without further evidence it cannot be robustly demonstrated that a larger dwelling is necessary for the enterprise to function.
- 8.10. In addition to this, the Applicant is a new owner of the existing business, confirming that they moved to the site in February 2024. Therefore, it is not accepted that the long-term sustainability of the enterprise has been evidenced as the new owner has been in place for less than one year. This uncertainty is reiterated by the Agricultural Consultant Appraisal referred to in paragraph 8.5 of this report.
- 8.11. Furthermore, Paragraph 13.22 of the SADMP provides commentary to support Policy DM5. It states that it is the needs of the enterprise to function properly which informs the size and scale of the dwelling, and not the needs of the worker. The Applicant has stated that the reason for the extensions is to support a growing family, which is not evidenced as needs of the enterprise and are instead needs of the worker.
- 8.12. Paragraph 84 of the Framework states that planning policies and decisions should avoid the development of isolated homes in the countryside unless there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside. This aligns with the aims of Policy DM5 of the SADMP, and it is therefore considered that although the Development Plan is out of date, the thrust of this Policy is still in line with the aims of the Framework in this regard.
- 8.13. Whilst the imposition of the condition is only justified through Policy DM5 in the condition wording, Officers consider that this application should also be considered against Policies DM4 and DM10. This is due to the site-specific circumstances being that PD rights were removed to keep the dwelling of an appropriate scale and appearance within the countryside. Policy DM4 considers that the extension of existing buildings in the countryside will be considered sustainable where they do not have a significant adverse effect on the intrinsic beauty, open character and landscape character of the countryside. Policy DM10 requires developments to complement or enhance the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features. If the relevant

condition was removed, development in the countryside which could not be assessed against these relevant criteria in DM4 and DM10 could proceed.

- 8.14. Policy DM5 seeks to 'safeguard the countryside from inappropriate development which includes new isolated homes.' It does not exclude other development such as extensions from being inappropriate. The condition therefore remains relevant to the planning permission
- 8.15. The Applicant is at liberty to engage in pre-application advice with the Council and can apply for planning permission for extensions to the existing dwelling. In this case, Officers would then be able to make an assessment regarding the design and impact on the character and appearance of the area, whilst potentially considering any additional evidence regarding the function and scale of the enterprise.
- 8.16. In terms of meeting the six tests in accordance with PPG, a condition should not be imposed if it cannot be enforced. In this case if any further extensions or alterations are added without any further permission then this can easily be enforceable as it would be easy to detect the contravention. It will not usually be difficult to monitor, as those affected by contravention of its requirements are likely to be able to provide clear evidence of any breaches. The application site can be seen from bridleway S80 despite the hedgerows, and glancing views of the site can be achieved from Main Street/Congerstone Lane to the east.
- 8.17. The wording and use of the condition is clear and precise for the applicant to be able to ascertain what must be done to comply with it. The condition is used widely in planning applications and is not vague in that it cannot be easily imposed. It is therefore considered that the wording of the condition is sufficiently clear and precise.
- 8.18. The condition added is specific to planning as it relates to the General Permitted Development Order. It does not relate to matters that are subject to control under separate legislation outside of planning. The condition is therefore considered to be entirely relevant to planning.
- 8.19. The adding of a condition must also be justified by the nature of the development that has been permitted, or its effect on the surroundings. The need for the condition arises out of extensions and alterations to the building that could be allowed through permitted development. In this case the concerns were for the effect of the proposal on its character especially if further, additions, alterations or extensions were added to the development. It is therefore relevant to the development permitted under the original permission.

Conclusion

- 8.20. In conclusion, it is considered that the proposal to remove the condition relating to permitted development rights is not acceptable. The condition passes the six tests, and the purpose of the condition to ensure that the size and scale appropriate to the proper functioning and needs of the rural enterprise, thus preventing any unacceptable impact on the character and appearance of the area, is still applicable. The application is therefore recommended for refusal.

9. Equality implications

- 9.1. Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-

A public authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 9.2. Officers have taken this into account and given due regard to this statutory duty in the consideration of this application.

- 9.3. There are no known equality implications arising directly from this development.

- 9.4. The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Recommendation

- 10.1. Refuse planning permission for the reasons set out below:

- 1) The removal of condition 3 of permission 16/00640/FUL is not acceptable. The condition passes the six tests, and the purpose of the condition to ensure that the size and scale appropriate to the proper functioning and needs of the rural enterprise, thus preventing any unacceptable impact on the character and appearance of the area, is still applicable. As such the proposal would not be in accordance with Policy DM5 of the Site Allocation and Development Management Policies DPD 2016 (SADMP) or Paragraph 84 of the National Planning Policy Framework (2023).