

## PLANNING COMMITTEE – 21 OCTOBER 2021

### PART I - DELEGATED

10. **21/1139/FUL - Removal of Condition 11 (Agricultural Occupation) of planning permission 17/2169/FUL at THE MULBERRY BUSH, FARM DAWES LANE, SARRATT, WD3 6BQ (DCES)**

Parish: Sarratt Parish Council  
Expiry of Statutory Period: 29.06.2021  
(Extension of Time Agreed 25.10.2021)

Ward: Chorleywood North & Sarratt  
Case Officer: Scott Volker

**Recommendation:** That Condition 11 be varied (subject to deed of variation to previous Section 106 being agreed).

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

#### 1 Relevant Planning History

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

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

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

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

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

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

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

*R2 The erection of a dwelling not justified by agricultural need would be a visible, prominent development in the locality, adversely affecting the appearance and character of this rural area within the Metropolitan Green Belt and Area of Outstanding Natural Beauty,*

*contrary to policy GB1, GB11 and N20 of the Three Rivers Local Plan 1996-2011.*

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

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

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

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

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

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

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

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

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

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

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

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

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

*R1 The proposal would comprise a further spread of scattered buildings and associated development in the very attractive open landscape of the Chess Valley in the Chilterns Area*

*of Outstanding Natural Beauty, detracting from the character and appearance of the locality and openness of the Metropolitan Green Belt, contrary to Policies GB1, N20 and N23 of the Three Rivers Local Plan 1996-2011.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Reason: The site is within an area where a dwelling would not normally be permitted and permission is only granted because the dwelling is intended to serve the needs of agriculture in accordance with Policy CP1, CP11 and CP12 of the Core Strategy*

(adopted October 2011) and Policies DM2 and DM7 and Appendix 3 of the Development Management Policies LDD (adopted July 2013).

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

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

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

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

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

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

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

1.24 20/2603/FUL - Variation of Condition 11 (Agricultural Occupation) of planning permission 17/2169/FUL to amend wording of the condition to as follows: 'The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower of such a person, and to any resident dependants' – Refused February 2021 for the following reason:

*R1 The proposed variation to the wording of Condition 11 (Agricultural Occupancy) of 17/2169/FUL would result in the dwelling not being secured for the exclusive occupation of agricultural workers to serve the agricultural needs of the Mulberry Bush Farm, despite the original permission being contingent on the need for on-site presence of workers to serve the Farm. This would impact on the future viability of the site as an agricultural holding and lead to future pressure for an additional agricultural dwelling on the site. The variation of the condition would therefore be unacceptable as it would lead to a dwelling which would be inappropriate development in the Green Belt contrary to Policy CP11 of the Core Strategy (adopted October 2011) and Policy DM2 and Appendix 3 of the Development Management Policies LDD (adopted July 2013).*

- 1.25 21/1417/PDF - Prior Notification: Change of use of agricultural buildings to a flexible commercial use Class C1 hotel / holiday accommodation - Prior Approval is Required and that Prior Approval is Given (subject to Section 106 Agreement) in July 2021.

### **Relevant Enforcement History**

- 1.26 19/0206/COMP - Breach of Condition 11 (Residency) of Planning Permission 17/2169/FUL – Pending Consideration.
- 1.27 20/0057/COMP – Unauthorised Operational Development to Chicken Sheds – Pending Consideration.

## **2 Description of Application Site**

- 2.1 The application site, outlined in red on the submitted Location Plan, has access from Dawes Lane along a roadway aligning its southern boundary and contains an agricultural worker's detached dwelling granted consent under application 17/2169/FUL and occupied by the applicant. The dwelling has a brick plinth and vertical timber clad exterior with a clay tiled roof.
- 2.2 The wider site of The Mulberry Bush outlined in blue on the submitted Location Plan is a 4.2 hectare (11 acres) agricultural holding, lying 600 metres to the south-west of the village core of Sarratt in South West Hertfordshire. The site lies on the side of a valley within the Metropolitan Green Belt and the Chilterns Area of Outstanding Natural Beauty. Dawes Lane aligns its south-eastern boundary. Part of the site adjacent to the south-eastern site boundary is within a Local Wildlife site. In addition to the access from Dawes Lane the wider site has access from Moor Lane to the west of the site which has recently been re-surfaced by the applicant under Schedule 2, Part 9 Class E of the GPDO. The site includes a number of buildings, some of which have undergone a change of use from agriculture to a flexible use to provide holiday accommodation (Use Class C1). One of these buildings (19/2143/PDA) is situated approximately 25 metres south-east of the agricultural worker's dwelling. Also converted are a former agricultural building located in the eastern part of the wider site, a building located centrally along the northern boundary and an agricultural building in a row of three located in the lower part of the site close to Moor Lane and closest to the northern corner of the site, all of which were permitted under application 20/0402/PDF.
- 2.3 Public footpath 52 runs parallel to part of the north-eastern boundary of the wider site and continues through Dawes Common, and woodland, to the north-east.
- 2.4 An Article 4 Direction, confirmed in 1963, applies to the site removing all agricultural permitted development rights.

## **3 Description of Proposed Development**

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

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

*Reason: The site is within an area where a dwelling would not normally be permitted and permission is only granted because the dwelling is intended to serve the needs of agriculture in accordance with Policy CP1, CP11 and CP12 of the Core Strategy*

*(adopted October 2011) and Policies DM2 and DM7 and Appendix 3 of the Development Management Policies LDD (adopted July 2013).*

- 3.3 The wording of the condition restricts the occupation of the dwelling to a person(s) working in agriculture on the 11 acres at The Mulberry Bush.
- 3.4 This application seeks to remove this condition. This would then remove the requirement for the occupants of the dwelling to be restricted to persons solely or mainly working, at The Mulberry Bush in agriculture, or be a widow or widower of such persons, and any resident dependants.
- 3.5 No changes to the dwelling itself are proposed under the application.
- 3.6 The application is supported by a Planning Statement prepared by Parsonson Planning Consultancy dated May 2021 and an Agricultural Needs Appraisal prepared by North Letherby Ltd. dated September 2021.
- 3.7 Conditional planning permission 17/2169/FUL was approved subject to completion of a S.106 legal agreement. Should this Section 73 planning application result in a new planning permission being granted, it will be necessary to vary the existing Section 106 by means of a Deed of Variation so as to ensure that the planning obligations secured by the principal deed also apply to the further grant of planning permission. The current extant S.106 secures the following planning obligations in respect of the Mulberry Bush:

#### **Permanent Poultry Houses**

1. Not to construct or place or permit or suffer to permit the construction or placement of more than seven (7) Permanent Poultry Houses on the Site at any time.

#### **Temporary Structures and Mobile Structures**

2. Not to construct or place or permit or suffer to permit the construction or placement of any Temporary Structures or Mobile Structures on the Site without the prior written approval of the Council.
3. Unless first agreed in writing by the Council, not to allow any type of vehicle to be brought onto or remain on the Site (excluding the Residential Curtilage) unless such type of vehicle is required:
  - a. For transportation purposes in connection with the lawful agricultural use of the Site and is so used, or
  - b. For transportation purposes in connection with any lawful use of the Site as permitted by the 2015 Order (without prejudice to the effect of any planning condition imposed in respect of the First Planning Permission or the Second Planning Permission or the Further Temporary Planning Permission restricting such use), or
  - c. For transportation purposes in connection with the lawful use of the Site for caravan and camping purposes in accordance with those permitted development rights contained in the 2015 Order where the circumstances described in paragraphs 2 or 3 of Schedule 1 of the Caravan Sites and Control of Development Act 1960 exist and is so used.
4. No vehicle shall be brought onto or remain within the Residential Curtilage unless it is reasonably required for the purposes incidental to the enjoyment of the Dwellinghouse and is so used.

#### **Feed Silos**

5. Not to construct, place or operate (or allow the construction, placing or operation of) on the Site of more than four (4) Further Mobile Feed Silos and not to do so unless such Further Mobile Feed Silo:

- a. Is located within five (5) metres of a Permanent Poultry House
- b. Is no higher (when measured to ridge height) than the nearest Permanent Poultry House
- c. Does not exceed the maximum capacity of six (6) tons;

AND FOR THE AVOIDANCE OF DOUBT the total cumulative number of Existing Mobile Feed Silos and Further Mobile Feed Silos on the Site shall not at any time exceed seven (7) in total;

6. Not to move any Existing Mobile Feed Silo from its Current position as shown on the Location Plan without the prior written approval of the Council
7. Not to replace any Existing Mobile Feed Silos or Further Mobile Feed Silos removed from the Site without the prior written approval of the Council.

### **Mobile Home and Caravans**

8. Subject to clause 4.2 and paragraph 12 of this Schedule, not to place nor permit the stationing or storage of any caravans or mobile homes (other than the Mobile Home), in accordance with this Deed) on the Site
9. Prior to its permanent removal from the Site in accordance with clause 10:
  - a. Not to move the Mobile Home from its Current position on the Site
  - b. Not to enlarge the Mobile Home
  - c. Not to alter the Mobile Home's Current physical appearance without the prior written approval of the Council
10. To permanently remove the Mobile Home from the Site at the earliest of the five dates/occurrences:
  - a. Within three months of the cessation of the use of the Mobile Home as a dwelling by an agricultural worker employed to supervise the agricultural business from the Site
  - b. Within three months of the date on which the Further Temporary Planning Application is withdrawn.
  - c. Within three months of the expiry, quashing or revocation of the Further Temporary Planning Permission
  - d. The date on which a refusal of the Further Temporary Planning Application is Finally Determined
  - e. Before the first Occupation of the First Development or Second Development (and not to occupy or permit Occupation of the First Development or Second Development unless the Mobile Home has been permanently removed for the Site)
11. Not to occupy nor cause or permit Occupation of the First Development or Second Development until the Mobile Home has been permanently removed from the Site
12. The provisions of this Schedule shall not prevent the use of the Residential Curtilage of the First Development or Second Development for the stationing of a single touring caravan present for purposes incidental to the enjoyment of the Dwellinghouse (in accordance with paragraph 1 of Schedule 1 of the Caravan Sites and Control of Development Act 1960)

### **Operation of Site**

13. Not to cause or permit the number of laying hens present on the Site at any one time to exceed eight thousand two hundred and fifty (8,250)
14. Not to cause or permit the number of chickens produced on the Site and slaughtered for meat to exceed nine thousand six hundred (9,600) per annum

### **Permanent Dwellinghouses**

15. To implement either the First Planning Permission or the Second Planning Permission

but not to implement both

16. Prior to carrying out a Material Operation pursuant to the First Planning Permission any Material Operations undertaken pursuant to the Second Planning Permission shall be demolished and that part of the Site restored to the condition it was in prior to the Second Development taking place
17. Prior to the carrying out a Material Operation pursuant to the Second Planning Permission any Material Operations undertaken pursuant to the First Planning Permission shall be demolished and that part of the Site restored to the condition it was in prior to the First Development taking place
18. Upon carrying out a Material Operation pursuant to the First Planning Permission thereafter not carry out any Material Operations pursuant to the Second Planning Permission
19. Upon carrying out a Material Operation pursuant to the Second Planning Permission thereafter not carry out any Material Operations pursuant to the First Planning Permission

3.8 Following the construction of the permanent dwelling pursuant to 17/2169/FUL and the removal of the mobile home that historically served as a temporary dwelling, officers consider that the following planning obligations would continue to remain necessary if the application is approved to make the development acceptable in planning terms:

#### **Permanent Poultry Houses**

1. Not to construct or place or permit or suffer to permit the construction or placement of more than seven (7) Permanent Poultry Houses on the Site at any time.

#### **Temporary Structures and Mobile Structures**

2. Not to construct or place or permit or suffer to permit the construction or placement of any Temporary Structures or Mobile Structures on the Site without the prior written approval of the Council.
3. Unless first agreed in writing by the Council, not to allow any type of vehicle to be brought onto or remain on the Site (excluding the Residential Curtilage) unless such type of vehicle is required:
  - a. For transportation purposes in connection with the lawful agricultural use of the Site and is so used, or
  - b. For transportation purposes in connection with any lawful use of the Site as permitted by the 2015 Order (without prejudice to the effect of any planning condition imposed in respect of the First Planning Permission or the Second Planning Permission or the Further Temporary Planning Permission restricting such us), or
  - c. For transportation purposes in connection with the lawful use of the Site for caravan and camping purposes in accordance with those permitted development rights contained in the 2015 Order where the circumstances described in paragraphs 2 or 3 of Schedule 1 of the Caravan Sites and Control of Development Act 1960 exist and is so used.
4. No vehicle shall be brought onto or remain within the Residential Curtilage unless it is reasonably required for the purposes incidental to the enjoyment of the Dwellinghouse and is so used.

#### **Feed Silos**

5. Not to construct, place or operate (or allow the construction, placing or operation of) on the Site of more than four (4) Further Mobile Feed Silos and not to do so unless such Further Mobile Feed Silo:
  - a. Is located within five (5) metres of a Permanent Poultry House
  - b. Is no higher (when measured to ridge height) than the nearest Permanent

Poultry House

- c. Does not exceed the maximum capacity of six (6) tons;

AND FOR THE AVOIDANCE OF DOUBT the total cumulative number of Existing Mobile Feed Silos and Further Mobile Feed Silos on the Site shall not at any time exceed seven (7) in total;

6. Not to move any Existing Mobile Feed Silo from its Current position as shown on the Location Plan without the prior written approval of the Council
7. Not to replace any Existing Mobile Feed Silos or Further Mobile Feed Silos removed from the Site without the prior written approval of the Council.

### **Mobile Home and Caravans**

8. Subject to clause 4.2 and paragraph 12 of this Schedule, not to place nor permit the stationing or storage of any caravans or mobile homes
9. The provisions of this Schedule shall not prevent the use of the Residential Curtilage of the First Development or Second Development for the stationing of a single touring caravan present for purposes incidental to the enjoyment of the Dwellinghouse (in accordance with paragraph 1 of Schedule 1 of the Caravan Sites and Control of Development Act 1960)

### **Operation of Site**

10. Not to cause or permit the number of laying hens present on the Site at any one time to exceed eight thousand two hundred and fifty (8,250)
11. Not to cause or permit the number of chickens produced on the Site and slaughtered for meat to exceed nine thousand six hundred (9,600) per annum.

## **4 Consultation**

### **4.1 Statutory Consultation**

#### **4.1.1 Sarratt Parish Council: [Objection – CALL IN]**

*Sarratt Parish Council strongly objects to this application.*

*Agricultural use and the associated occupation was a key tenet of the original application 17/2169/FUL for the dwelling, and its subsequent approval. SPC is aware from recent correspondence with the owner of The Mulberry Bush and a recent site visit by the TRDC Case Officer that the owner contends that the farm is moving towards horticulture and viniculture which he states are both valid forms of agriculture. As such, there are no grounds for the removal of Condition 11 (Agricultural Occupation) and application 21/113/FUL should be refused.*

*SPC respectfully request that this application is called into Committee if the planning officers are minded to approve.*

#### **4.1.2 National Grid: [No response received]**

## **5 Public/Neighbour Consultation**

5.1.1 Number consulted: 84

5.1.2 No of responses received: 11 objections, 0 letters of support

5.1.3 Site Notice: Posted 14.05.2021 Expired 05.06.2021

5.1.4 Press Notice: Published: 21.05.2021 Expired: 12.06.2021

### 5.1.5 Summary of Responses:

- Overdevelopment
- Condition 11 was carefully worded when the original planning permission was granted. A variation to include the words "or last working" and "forestry" severely undermines the integrity of the restriction.
- Retrospectively trying to legalise what is an illegal act.
- Unacceptable in the ANOB or in the Green Belt
- Set a dangerous precedent, and makes a mockery of the planning department and planning law in Three Rivers.
- Original application was granted on specific agricultural grounds, which he now seeks to turn back to front as no agriculture exists.
- Planning permissions was obtained with conditions so that the development was consistent with the setting.
- The original conditions for planning approval have been blatantly disregarded, which should result in a demolition order.
- The application must be rejected in order to avoid setting a dangerous planning precedent.
- Section 4 confirms that the applicant didn't start to build the dwelling until after the agricultural use ceased. This is a material change to which invalidates the Planning Permission so it would have been unlawful when it was built.
- To permit the application would encourage building requests from huge numbers of rural applicants all of whom would meet such criteria.
- No longer an agricultural need for the dwelling to be on site.
- The Mulberry Bush has failed to sustain a functional and financial need for an agricultural workers dwelling for the last 3 years since dwelling was approved.
- The applicant says Condition 11 is an infringement of his human rights. He appears oblivious to the human rights of neighbours - his holiday lets plan will create unacceptable intrusions of noise and traffic volumes
- This is planning by stealth and sets a dangerous precedent.
- Condition 11 as originally drafted continues to be necessary to ensure that need.
- Wrong type of application submitted.
- Earlier application to vary condition was refused and this current application should be refused as well

## 6 Reason for Delay

6.1 Legal advice required and committee cycle.

## 7 Relevant Planning Policy and Guidance

### 7.1 National Planning Policy Framework and National Planning Practice Guidance

7.1.1 In 2021 the new National Planning Policy Framework (NPPF) was published. The framework is a material planning consideration to be taken into account in planning decisions along with the National Planning Practice Guidance (NPPG). NPPF 47 states:

7.1.2 'Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.' This guidance applies equally to section 73 applications for the amendment of conditions on existing planning permissions (Pye v. SSOE [1998] 3 PLR 72). NPPF 80 advises that:

*"Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:*

*(a) 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..."*

## 7.2 The Three Rivers Local Development Plan

- 7.2.1 The planning merits of this application are to be considered against the relevant policies of the development plan including the Core Strategy (adopted October 2011), the Development Management Policies Local Development Document (adopted July 2013) and the Site Allocations Local Development Document (adopted November 2014). The relevant development plan policies of Three Rivers District Council reflect the guidance in the NPPF.
- 7.2.2 The Core Strategy was adopted on 17 October 2011 having been through a full public participation process and Examination in Public. Relevant policies include Policies CP1: Sustainable Development, CP2: Housing Supply, CP3; Housing Mix and Density, CP4, Affordable Housing, CP9: Green Infrastructure, CP10: Transport and Travel, CP11: Green Belt and CP12 Design of Development.
- 7.2.3 The Development Management Policies Local Development Document (DMLDD) was adopted on 26 July 2013. Relevant policies include DM1: Residential Design and Layout, DM2: Green Belt, DM4: Carbon Dioxide Emissions and On site Renewable Energy, DM6: Biodiversity, Trees, Woodland and Landscaping, DM7: Landscape Character, DM8: Flood Risk and Water Resources, DM9: Contamination and Pollution, DM10: Waste Management, DM13: Parking and Appendix 3: Agricultural and Forestry Dwellings.

## 8 **Planning Analysis**

### 8.1 Introduction

- 8.1.1 Planning application 17/2169/FUL for the construction of a single agricultural worker's dwelling was presented to the Planning Committee in December 2017 with a recommendation for approval; the relevant functional and financial tests having been met for a permanent agricultural dwelling on the application site in the Green Belt to serve the agricultural needs of the Mulberry Bush farm in accordance with Appendix 3 of the Development Management Policies LDD. As noted in the planning officer's report, the applicant Mr Norris had been employed full time on agricultural activities at the Mulberry Bush since 2001; and it was demonstrated that there was a need for a dwelling on the site so that an agricultural worker was readily available in connection with the operation of a chicken farm enterprise comprising of four flocks of 1,600 hens each (6,400 laying hens) and three to four batches of 700 each (up to 2,800 in total) of young chicks being reared on in different groups every 4 weeks for table birds. The business employed 4 full time workers and a number of part-time workers who attended various farmers' markets and assisted with the day-to-day running of the poultry business.

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

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

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

- 8.1.3 The 'needs of agriculture' referred to in the Reason for the condition was supported by a report produced by *Kernon Countryside Consultants* and were related to the on-site

agricultural activities at The Mulberry Bush described in the officer's report and summarised in paragraph 8.1.1 above. Planning permission 17/2169/FUL has been implemented with the construction of the dwelling completed and it is currently occupied by the applicant Mr. Norris, the freehold owner of The Mulberry Bush farm. Officers note that, since shortly after the grant of planning permission for the permanent agricultural worker's dwelling, there have been no chickens kept on the site and a number of the chicken sheds have been converted into holiday accommodation as detailed within para. 2.2 above.

8.1.4 This application seeks to remove Condition 11 (Agricultural Occupancy) of planning permission 17/2169/FUL. Accordingly it is necessary to assess whether the condition continues to serve a planning function having regard to the guidance in NPPF 56 and in the National Planning Practice Guidance.

## 8.2 Wording of Condition 11

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

8.2.2 Paragraph 56 of the NPPF makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

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

8.2.3 The PPG (Para: 018 Reference ID: 21a-018-20190723) states that rigorous application of the six tests should be undertaken each time a planning condition is being considered, be that through imposition, removal or variation.

8.2.4 Policy DM2 : Green Belt says:

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

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

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

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

8.2.7 The Planning Statement prepared by Parsonson Planning Consultancy, Ref:: s73-2012-v-1, accompanying the application contends in paragraph 1.05 that Condition 11 'cannot be justified because:

“(1.) can no longer serve the intended planning purpose as required by paragraph 15 of LDP Appendix 3;  
(2.) is unnecessary, no longer relevant to the development and unreasonable wherein it fails requisite tests for conditions prescribed by paragraph 55 of the National Planning Policy Framework where failing just one is fatal to it;  
(3.) its continued retention is placing unjustifiable burdens upon the applicant;  
(4.) the proposal will not cause demonstrable harm;  
(5.) in development plan and decision making terms these are material considerations of significant weight;”

8.2.8 As noted at para. 8.1.3 above, planning permission 17/2169/FUL, including Condition 11, was granted for the agricultural worker's dwelling to serve the needs of agriculture at The Mulberry Bush farm. It is appropriate, accordingly, in determining this application which seeks the removal of the condition, to consider whether Condition 11 meets the six tests in NPPF 55 as set out at para. 8.2.2 above.

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

8.2.9 The Planning Statement 4.01 acknowledges that:

*“It is acknowledged that at the time of its imposition, pursuant to 17/2169/FUL, an agricultural occupancy condition was deemed necessary to make the development acceptable in planning terms. That planning decision is a settled matter.”*

8.2.10 The LPA consider that this does remain the case today and that an agricultural occupancy condition restricting the occupation of the dwelling remains necessary, relevant to planning and relevant to the development permitted applying Policies DM2 and CP11. Planning permission for an isolated residential development within the Green Belt would not have been supported without proof of the dwelling being required to 'serve the needs of agriculture' as stated in the Reason for Condition 11. As stated in the Planning Statement 4.07:

*“agricultural activities continue on the site and the applicant remains employed in agriculture.”*

8.2.11 Furthermore the applicant is a rural worker who, it is indicated, has a majority control of the Mulberry Bush Farm business for the purposes of NPPF 80. While the agri-business model may have changed since 2017, as the Planning Statement makes clear, this has led to:

*“4.10 ...changed cropping on the farm from poultry to horticulture... Viticulture is also being actively explored by the applicant with members of his family.”*

8.2.12 The planning purpose served by the imposition of Condition 11, namely agricultural need, accordingly remains extant today for these policy reasons.

*4. Enforceable*

8.2.13 With regards to enforceability, it has been previously asserted by Parsonson Planning Consultancy within their Planning Statement submitted in support of 20/2603/FUL that Condition 11 “appears to meet the test of enforceability.” Officers agree that this is the case. The condition restricts the occupation of the dwelling to readily identifiable persons.

*5. Precision*

8.2.14 Condition 11 is precise in its terms. Its wording is clear. This is acknowledged in the 20/2603/FUL Planning Statement which stated that “we can understand the terms used within Condition 11 inferring precision.” 6. Reasonableness

8.2.15 At 3.17, 4.20-4.21 the Planning Statement supporting this application questions the reasonableness of Condition 11 on the grounds that it precludes occupation of the dwelling by someone working in agriculture within the locality or someone who last worked in agriculture in the locality. As part of the proposal to vary the wording of Condition 11 under application 20/2603/FUL the submitted Planning Statement in support of 20/2603/FUL drew attention to the model condition 45 in Appendix A of Circular 11/95 worded as follows:

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

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

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

*Planning permission usually runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission. For example, conditions limiting benefits to a particular class of people, such as new residential accommodation in the open countryside for agricultural or forestry workers, may be justified on the grounds that an applicant has successfully demonstrated an exceptional need.”*

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

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

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

8.2.19 While the LPA acknowledge that Circular 11/95 has been cancelled, this policy rationale for the wording of the model condition has been upheld by inspectors on appeal. A recent example is the appeal decision of Inspector Walker MRTPI 17/12/2019 APP/R0660/W/19/3236598 where in paragraph 21 he held:

*‘In the interests of protecting the open countryside from unacceptable encroachment, a condition is necessary restricting the building use to only those employed in agriculture or forestry or their widowed spouse and resident dependants. At the hearing there was a discussion as to whether there should be a personal condition tying the dwelling to the business. However, were the business to cease trading the dwelling would not be able to*

*be occupied, which would put pressure on the Council to remove the condition, resulting in it becoming an open market dwelling.'*

- 8.2.20 Where Condition 11 restricts the occupation of the dwelling to persons working on the farm and no other persons, it has no regard to the future possibility of the failure of the agricultural business at The Mulberry Bush. Were the business to cease, the dwelling would not be able to be occupied which would put pressure on the Council to remove the condition with the result in it becoming an open market dwelling. This is a risk that is recognised in national planning guidance as one to be avoided in the interest of protecting the countryside. And in the LPA's view, it is a real risk inherent in the wording of Condition 11 that is not in the public interest of protecting the countryside in the Green Belt in Three Rivers District.
- 8.2.21 Following the grant of application 17/2169/FUL, the LPA have been in receipt of a number of concerns that the applicant has breached Condition 11 of the permission as the chicken farm enterprise, which justified the need for a permanent dwelling to be on the application site, appears to have ceased. An enforcement investigation was subsequently opened (ref: 19/0206/COMP) and is pending consideration. While it is not appropriate to pre-judge the outcome of the enforcement proceedings, the possibility of the agricultural business at The Mulberry Bush farm ceasing reinforces the planning merits of widening the scope of the occupancy of the dwelling to include persons employed or mainly employed on agriculture in the locality.
- 8.2.22 The objective of planning policy as contained in the NPPF the NPPG and model condition 45, is to seek to retain agricultural dwellings to ensure that they can be kept available to meet future agricultural needs within the locality, and not just for the purposes of a single holding
- 8.2.23 In addition to the above considerations, Condition 11 omits the phrase "*or last working*" which can be also be considered unreasonable. The term "*last working*" is included in the model to cover the case both of a person who is temporarily unemployed or of a person who from old age or illness is no longer able to work in agriculture.
- 8.2.24 The words 'or mainly working' would include persons who engaged in other part-time employment enabling them to continue to remain working in agriculture in the interests of the rural economy.
- 8.2.25 In these circumstances, where up-to-date national planning policies recognise that where agricultural dwellings are granted planning permission as an exception to restrictive countryside policies, agricultural occupancy conditions should accommodate a class of persons, namely agricultural and forestry workers working in the countryside generally, the LPA considers it is arguable that Condition 11 places an unreasonable planning restriction on the occupation of the dwelling.
- 8.2.26 In addition, Condition 11, as currently worded, would place limitations on the use of the dwelling to serve the commercial agricultural needs of the farm, including the ability to raise finance, should the holding expand beyond the existing 11 acres.

### 8.3 The proposed removal of Condition 11

- 8.3.1 The application seeks the full removal of Condition 11 attached to planning permission 17/2169/FUL. This application follows a recently refused application which sought planning permission to vary the wording of condition 11 to reflect the model condition 45 under reference 20/2603/FUL.
- 8.3.2 As set out in paragraph 7.1.1 planning permission was granted after the relevant functional and financial tests having been met for a permanent agricultural dwelling on the application site in the Green Belt to serve the agricultural needs of the Mulberry Bush farm in accordance with Appendix 3 of the Development Management Policies LDD. The 'needs of

agriculture' related to the on-site agricultural activities at The Mulberry Bush in connection with an established chicken farming enterprise.

- 8.3.3 The Planning Statement at 4.07 sets out that there is no longer a need to retain the agricultural occupancy condition to serve the agricultural needs of The Mulberry Bush. Paragraph 4.08 onwards states:

*"4.08 The applicant, having developed the poultry business over the past decades has faced significant challenges in more recent years. The economic returns from small scale Free Range egg production has shifted from being reasonable and secure, to marginal and risky.*

*4.09 Add to this the challenges arising through Brexit, recent outbreaks of Avian Flu, the proliferation of Red Kites and most recently, Covid 19, the business model is now irrevocably changed.*

*4.10 These challenges have been the motivator for changing cropping on the farm from poultry to horticulture. This, in turn, has precipitated the change of use of some of the chicken units through Class R Permitted Development Rights. Viticulture is also being actively explored by the applicant with members of his family.*

*4.11 The LPA has been clear that Condition 11 was attached to the planning permission to restrict the occupancy of the dwelling to an agricultural worker employed exclusively and specifically in connection with the active chicken farm enterprise on the 11 acres of The Mulberry Bush farm and nowhere else. This was reinforced by a recent unanimous decision to refuse to vary Condition 11.*

*4.12 The wording of the condition was specifically constructed to serve this particular need 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).*

*4.13 In short; the advanced need for on-site accommodation, which was established through the development of a poultry business over some 20+ years, secured the use of the resulting dwelling for the exclusive occupation of agricultural workers serving the agricultural needs of the poultry business at Mulberry Bush Farm.*

*4.14 Condition 11 was thus drafted explicitly to ensure that the dwelling was kept available for meeting the advanced need for as long as it existed, reliant upon and compliant with LDP Appendix 3, paragraph 15.*

*4.15 However the poultry business, and therein this need, no longer exists. Accordingly, in the absence of need, Condition 11 is found to be otiose and no longer necessary.*

*4.16 Flowing from this, Condition 11 is no longer relevant to the development which was entirely founded upon welfare standards of poultry which are no longer kept on site."*

- 8.3.4 As noted, the Planning Statement 4.08 states that the applicant has faced significant challenges in recent years including the viability of the business due to a shift in the economic returns from small scale Free Range egg production from being reasonable and secure to marginal and risky. In addition to this, the challenges arising through Brexit, recent outbreaks of Avian Flu, the proliferation of Red Kites and most recently, Covid-19, the business model is now irrevocably changed.

- 8.3.5 Notwithstanding the success or failure of the commercial viability of the free range poultry farming business, however the Planning Statement at 4.10 details that as a result of the challenges the applicant has been motivated to diversify the agricultural use of and change the cropping of the farm from poultry to horticulture.

- 8.3.6 The site includes two existing polytunnels which are currently in use for growing herbs and planning permission was granted for the erection a new replacement polytunnel to create a more efficient environment for growing herbs and salad crops on the site. This polytunnel is under construction but is yet to be brought into its first use. Other alternative agricultural uses are being explored by the applicant including Viticulture. The Agricultural Needs Appraisal accompanying the application also details that a sheep enterprise comprising of 30-35 ewes could be sustained at the farm and is being considered. Furthermore, whilst a number of the chicken sheds are proposed to be converted to hotel accommodation through Class R Permitted Development Rights, there are three sheds still available for agricultural use. As mentioned above, planning permission was previously sought in 2020 under application 20/2603/FUL to vary the wording of Condition 11 and this application was supported by details that the agricultural activity on the farm was ongoing and the current wording of the condition was overly restrictive and prevented any expansion of the agricultural activity beyond the 11 acres of The Mulberry Bush Farm.
- 8.3.7 The works to construct the agricultural workers dwelling were completed in 2018 and the dwelling has been continuously occupied by the applicant since works were completed. As confirmed by the Agricultural Needs Appraisal undertaken in support of this application by North & Letherby, the applicant continues to work in agriculture at the Mulberry Bush notwithstanding the cessation of the chicken farm enterprise. The current occupation of the agricultural dwelling by Mr & Mrs Norris does not constitute a breach of Condition 11. Mr Norris has recently began construction of a new polytunnel for horticulture purposes. Paragraphs 6.21-6.22 of the ANA confirms "*agricultural production continues at the Mulberry Bush*", adding that horticultural production will increase as a result of the construction of the new replacement polytunnel that was granted consent at appeal in 2020 (PINs Ref: APP/P1940/W/20/3247693 LPA Ref: 20/0014/REF). Furthermore, as set out above, the applicant has future plans for agricultural diversification at the Mulberry Bush which may include viticulture and sheep farming. However the ANA concludes that unlike the former poultry farming activities that took place on the land, none of those contemplated expanded or new agricultural activities would necessitate an on-site presence and submits that Condition 11 can no longer be considered to comply with the six tests as set out at Para 56 of the NPPF, in particular that it is necessary in planning terms and reasonable in all other respects. These submissions address the very restrictive wording of Condition 11 but would be only of limited relevance were Condition 11 to reflect the model wording.
- 8.3.8 Whilst the occupancy criteria as set out in Condition 11 tied the occupation of the dwelling to the agricultural enterprise that informed the original need for it, officers are of the view that the wording as required by members of the planning committee when resolving to grant planning permission for a permanent dwelling in 2017 was unduly restrictive and went beyond what was necessary. This would appear to be borne out by the wording of the reason for condition 11 which referred to the dwelling being intended "to serve the needs of agriculture". It is clear from the agricultural model occupancy condition (No 45) contained in Annex A of Circular 1/95 ("*the occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower of such a person, and to any resident dependants*") **that it is the need for a dwelling for someone solely, mainly or last working in agriculture or forestry in an area as a whole, and not just on the particular holding, that is relevant in the case of farm or forestry workers' dwellings (officers emphasis)**. The previous application reference 20/2603/FUL sought a variation of Condition 11 so as bring it into conformity with the model condition. Officers recommended approval of the application on this basis.
- 8.3.9 Officers would again recommend that the current wording of Condition 11 be substituted for Circular 11/95 Annex A's model agricultural occupancy condition. This condition would permit the wider occupation of the dwelling by persons working in the locality in agriculture or forestry, thereby meeting the previously identified need for an agricultural workers dwelling. The model condition would also be consistent with the reason cited for condition 11 which explained "*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.”*

8.3.10 The dwelling is currently occupied by the applicant Mr Norris but the lawfulness of that occupation is dependent on him continuing to solely or mainly work at the Mulberry Bush in agriculture. Were agricultural activities on the site to cease (or the tourist use of the Site to become the dominant use) and Mr Norris to remain in occupation, then unlike the model condition (which refers additionally to “last working”), Mr Norris’s continuing occupation of the dwelling would be in breach of Condition 11. The Planning Statement prepared by Parsonson contends:

*“Excluding occupation of the dwelling by those who, by dint of age, failing health or disability, seek to retire from their agricultural employment steps over a significant line. This is potentially both discriminatory and an infringement of a property owners Human Rights under Article 8 of the 1998 Act. A public body should not interfere or impinge in such a way which denies respect to a property owners rights to his home.”*

8.3.11 As well as making no provision for a retired worker, Condition 11 currently also fails to ring-fence the use of the dwelling for the benefit of future agricultural workers. Were all agricultural activities at the Mulberry Bush to cease, Condition 11 as worded would not provide for agricultural workers serving the area as a whole. Accordingly the model condition should be substituted for Condition 11.

8.3.12 Where an application is made to remove a model agricultural occupancy planning condition the PINS Planning Appeals Procedural Guide (Appendix J) advises that:

***For appeals concerned with the removal of an agricultural occupancy condition attached to an earlier permission, the Inspector is likely to need the information detailed below:***

- evidence of existing demand or lack of demand for houses for agricultural or, where appropriate, other rural workers in the area;
- *whether there are any vacant dwellings in the neighbourhood that are suitable for agricultural or other rural workers. If so, you should provide details of the asking price or rent;*
- *evidence of efforts to sell or lease the dwelling subject to the occupancy condition. This should include any offers to buy the property and, if it has been advertised, how frequently, for how long and the names of the publications it has been advertised in;*
- *what the asking price or rent was, whether this reflected the reduction in value arising from the occupancy condition and, if so, by how much;*
- *the history of the site and details of the land owned (to include details of any land with full agricultural tenancy, additional land rented and other dwellings on the site).*

8.3.13 None of these issues are addressed specifically or in any detail addressed in the application and accompanying documentation.

## 8.4 Conclusion

8.4.1 In conclusion, in its current form Condition 11, is considered to be not in accordance with the up-to-date NPPF and NPPG guidance including model condition 45 and arguably is unreasonable. Whilst it is acknowledged that the chicken farm enterprise which was required to demonstrate the need for the dwelling on the site has currently ceased, nevertheless alternative agricultural/horticultural activities are ongoing and others being explored; and the occupier of the dwelling remains employed in agriculture / horticulture on the farm. Thus it is considered that there is still a continuing agricultural need served by the dwelling that is necessarily secured by Condition 11 modified to reflect the wording of the model planning condition.

- 8.4.2 Under Section 73 of the Act the LPA can grant planning permission unconditionally, or subject to different conditions or refuse the application if they consider the original condition(s) should continue unchanged. For the reasons set out above officers consider that there is a continued need for the dwelling to serve the needs of agriculture at the Mulberry Bush Farm but accept that the current wording of the condition is overly restrictive and potentially prevents the agricultural activities at the farm from expanding and/or the dwelling serving a wider area of agricultural need for residential accommodation. Should the agricultural activities at The Mulberry Bush Farm cease then it is considered that the dwelling should be made available to serve the needs of agriculture in the locality in line with the model condition 45 in the absence of proof of the matters identified above in the PINS guidance. As such, in this case officers advise the LPA do not consider that condition 11 should be removed but instead be varied.
- 8.4.3 The substitute condition recommended to be imposed, would follow the wording of the model condition and it is considered would thereby meet the tests set out at para. 56 of the NPPF. The substitute condition would accord with the continuing use of the Mulberry Bush for agriculture/horticulture and with the development plan policy in CP11 of the Core Strategy (adopted October 2011) and Policy DM2 and Appendix 3 of the Development Management Policies LDD (adopted July 2013) in ensuring that the dwelling remained subject to an appropriate agricultural occupancy condition and would, thereby, better serve the needs of agriculture, including forestry and the public interest in protecting the countryside in this part of the District.
- 8.4.4 The variation of Condition 11 of 17/2169/FUL (which is now listed as Condition 3 below) would not result in any greater harm to the openness of the Green Belt as the built form currently exists and there would be no intensification of use, additional incursion of residential development or domestic paraphernalia into the countryside or Green Belt than that associated with the development of the dwelling under 17/2169/FUL.

## **9 Recommendation**

9.1 Planning permission should be granted subject to:

1) The prior completion of a Deed of Variation entered into pursuant to Section 106 and 106A securing the heads of terms as set out at paragraph 3.8 above, and

2) the following conditions:

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

### Part 1

Class A – enlargement, improvement or other alteration to the dwelling

Class B – enlargement consisting of an addition to the roof

Class C – alteration to the roof

Class D – erection of a porch

Class E – provision of any building or enclosure

Class F – any hard surface

Class G – provision of a chimney, flue, soil or vent pipe

Class H – installation, alteration or replacement of an antenna

### Part 2

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

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

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

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

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

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

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

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

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

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

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

## 9.2 Informatives

- 11 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.
- 12 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.