DELEGATED DECISION REPORT

SMD/2018/0313 **Valid 29/05/2018**	**BARN AT** **PAYNSLEY HALL FARM** **SANDON ROAD** **CRESSWELL**	**REMOVAL OF CONDITION 11(AGRICULTURAL WORKER OCCUPATION) IN REGARDS OF DET/2017/0022.** **(FULL - MINOR)**

MAIN ISSUES

- Highways

DESCRIPTION OF SITE

Approved Class Q barn conversion. The building is a modern 20th C steel framed shed 13.5m x 18m with generally breeze block walls to c.2.0m to 2.5m and sheet cladding above and to the roof. It stands in relative isolation alongside the track to Paynsley Hall Farm some 750m from the farm. There are nearer residential neighbours at The Shippons c.100m to the WNW and at Leese House Farm c.150m WNW. Some 575m to the SW is a further residential neighbour at West Paynsley Farm. All these properties are served by a private single track lane from the public highway – Sandon Road – a journey distance of 1km NW from the application building. For its first c750m from the public road this track is also a Public Footpath Right of Way.

PROPOSAL

A condition was attached to the DET/2017/0022 as follows:

> 11. The occupation of the dwelling shall be limited to a person solely or mainly working, or last working at Paynsley Hall Farm or other premises served by the access track from Sandon Road to the dwelling, or a widow or widower of such a person and to any resident dependants.
>
> **Reason**: In order to minimise any increase in vehicular traffic using the access from the public highway at Sandon Road in the interests of Highway safety in compliance with SMDC Core Strategy DC1 and T1 and the NPPF paragraph 32.

The proposal to be determined here is an application to remove the above condition (No.11) – **TCPA (1990) s.73**

In support of the application statements have been submitted from:

- the Planning Agent;
- Graham Watkins and Co in respect of agricultural worker requirements;
- Cameron Rose 'Technical Note' in respect of highways matters;
- Knights 1759 giving legal advice.

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

Core Strategy Development Plan Document (Adopted 2014)
S01 Spatial Objectives
SS1 Development Principles
SS1a Presumption in Favour of Sustainable Development
SS6c Other Rural Areas Area Strategy
T1 Development and Sustainable Transport

Local Plan Submission Version (February 2018)
SS1 Development Principles
SS1a Presumption in Favour of Sustainable Development
SS10 Other Rural Areas Area Strategy
T1 Development and Sustainable Transport

National Planning Policy Framework July 2018
Paragraph(s) 1 – 14;
Section(s) 4 – Decision making; 12 – Achieving well designed places; 9 – Promoting sustainable transport

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

DET/2017/0022 Class Q change of use of agricultural building to dwelling. No earlier planning history can be found in the Council's records. A date plaque within the building gives the date of erection as 1986. At this time the 1977 Town and Country Planning General Development Order was in force and under Class VI an agricultural building of a scale and form as here would not have required consent. The requirement for prior notification to the LPA was only introduced more recently. In 2014 consent was given for an agricultural worker's dwelling at Paynsley Hall Farm (SMD/2013/1024).

CONSULTATIONS

Publicity
Site Notice expiry date: None displayed
Neighbour consultation period ends: 21st August 2018
Press Advert: N/A

Public Comments
None

Town / Parish Comments
Draycott Parish Council object to the removal of condition 11 (Agricultural Worker Occupancy). This agricultural tie would have been put in place because the farm is in Green Belt land and to preserve farming community. [NB this is not in Green Belt (case officer)]

Staffordshire County Council Highways
SCC Highways stand by their original assessment and compromise solution by way of the condition to restrict the occupancy. The initial Highways comments in response to DET/2017/0022 were:

1 Insufficient Information
2 The traffic generated by the proposed development would be likely to result in an increase in highway danger owing to increased use of the existing access which affords restricted visibility for:
- drivers emerging from the access

The access road leading to the site is substandard in that:
- it is of inadequate width to the rear of the existing dwellings on Rookery Crescent to allow two vehicles to pass and the increased use of such roads would result in an increase in the likelihood of danger to road users.
The recommendation of refusal was stated to not prejudice consideration of a further application at a later date when:
- details of the existing/potential trip generation of the agricultural building;
- details or numbers and routes of agricultural vehicles;
- provision of passing bays on the access track;
- improvement to visibility at the junction onto Sandon Road;
are included in the application.

The Planning statement asserted that visibility at the access to Sandon Road is good. However this is not the case. Application SMD/2013/1024 was for an agricultural workers dwelling which would potentially reduce the use of the narrow access to Sandon Road through the farm worker living on site. It also states that the access is currently in use for agricultural and domestic purposes, but no details of numbers are given.

The access between Sandon Road and Little Croft/Country View is narrow with limited passing places. Intensification of use would increase the likelihood of vehicles meeting in this length with little option but to reverse, potentially onto Sandon Road. There is nothing in the submitted application to suggest the use will not be intensified. The application site appears to be connected to a sizeable farm. There is nothing in the application to suggest that the uses of the barn are not being distributed elsewhere on the farm and this development will not be a pure intensification. Similarly, if the barn is not in use now, bringing it into residential use will be an intensification.

On basis of the above SCC Highways recommended refusal due to the limitations of the private access road. Following discussions with the agent and further consultation with SCC Highways in which it was established that the applicant wished to use the accommodation for persons employed at Paynsley Hall Farm it was established that SCC Highways would support the development if the occupancy were restricted by way of condition to persons working at the farm.

Correspondence with agent (key extracts)
There has been an extended e-mail correspondence with the agent key items of which are quoted in the discussion in this report. The full correspondence is available on the electronic file.

OFFICER COMMENTS

Principle of Development
Subject to a series of detailed criteria set out under Part 3 of Schedule 2 to the General Permitted Development Order (2015) Class Q, the conversion of a building in use for agriculture as part of an established agricultural unit on 20th March 2013, or when last in use prior to that, can be converted to a dwelling house (Class C3 use).

One of the specified criteria listed at condition Q.2 (1) of Class Q to the GPDO (2015) concerns highways and the LPA is required to determine whether the prior approval of the authority will be required as to (a) transport and highways impacts of the development. Under the procedure section (W) of Part 3 it is set out at W(10) that "…the local planning authority must when determining an application – (b) have regard to the NPPF… so far as relevant to the subject matter of the prior approval, as if the application were a planning application…"

The site in question has been granted consent subject to conditions including condition 11 as set out above under the Proposal section.

SCC Highways at first recommended refusal of the application due to the poor access from Sandon Road. In discussions with the applicant's agent it was however established that the new Class Q dwelling was to be occupied by a person working at the farm and who currently already resided at the farm. On this basis it was accepted that the proposal would not result in any net increase in neighbourhood road traffic using the access from the public road. The condition was attached in order to secure this.

Under the Highways section the delegated officer report stated:

> "The concerns are resolved by the attachment of an occupancy condition. It is clear that the access road is significantly constrained in particular by the first 275m back from the public highway being single track without passing spaces therefore risking the possibility of vehicle being unable to pull in off the public road or being forced to attempt to back out again. By way of the occupancy condition the traffic impacts will in theory result in no significant net change."

The assessment and decision were reached under NPPF 2015. The NPPF has since been revised as of July 2018 and the relevant considerations are contained at chapter 9 'Promoting Sustainable Transport'. NPPF (2018) para. 108 states that in assessing specific applications for development, "it should be ensured that: [inter alia] b) safe and suitable access to the site can be achieved for all users; and c) any significant impacts from the development… on highway safety, can be cost effectively mitigated to an acceptable degree".

Paragraph 109 states that “Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety…”

Paragraph 206 of the National Planning Policy Framework states that: “Planning conditions should only be imposed where they are:

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

The six points are discussed further in the NPPG as follows.

Necessity
Will it be appropriate to refuse planning permission without the requirements imposed by the condition?

- A condition must not be imposed unless there is a definite planning reason for it, ie. it is needed to make the development acceptable in planning terms.
- If a condition is wider in scope than is necessary to achieve the desired objective it will fail the test of necessity.

LPA consideration: given the Highways recommendation the LPA considered that it would have needed to refuse the application had condition 11 not been added. The condition is not wider in scope than necessary being specific to a farm worker household.

Relevance to planning
Does the condition relate to planning objectives and is it within the scope of the permission to which it is to be attached?

- A condition must not be used to control matters that are subject to specific control elsewhere in planning legislation (for example, advertisement control, listed building consents, or tree preservation).
- Specific controls outside planning legislation may provide an alternative means of managing certain matters (for example, works on public highways often require highways’ consent).

LPA consideration: highways matters, specifically “ transport and highways impacts of the development are a specified point in the LPA determination as to whether prior approval will be required and paragraph W applies. Paragraph W states at W(5):

(5) Where the application relates to prior approval as to transport and highways impacts of the development, on receipt of the application, where in the opinion of the local planning authority the development is likely to result in a material increase or a material change in the character of traffic in the vicinity of the site, the local planning authority must consult—

It is clear that highways impacts are a legitimate planning consideration under Class Q and indeed this is common ground with Knights (on behalf of the applicant). Knights note the paragraph W(5) provision is linked to the LPA being of the opinion that "the development is likely to result in a material increase or a material change in the character of traffic in the vicinity of the site" and do not take issue with the LPA having raised a consultation with the Highway Authority in this case.

Relevance to the development to be permitted
Does the condition fairly and reasonably relate to the development to be permitted?

- It is not sufficient that a condition is related to planning objectives: it must also be justified by the nature or impact of the development permitted.
- A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development.

LPA consideration: the condition is fairly and reasonably related in that its effect in the LPA's analysis – taking account of the specific circumstances presented – is to avoid a further household becoming established and dependent upon the highway junction with Sandon Road and the route from it, thereby keeping vehicle journey movements to the current likely levels.

Knights say that this approach is "fundamentally flawed on a number of levels". Their reasoning being that the condition does also allow for a person last working at Paynsley Hall Farm or other premises served by the access track from Sandon Road to the dwelling, or a widow or widower of such a person and to any resident dependants to occupy the dwelling and it is therefore not exclusively restricted to occupation by the essential farm worker.

The LPA recognises this but also notes that if the dwelling were not occupied by one of the farm's essential workers this would leave the farm short of essential worker accommodation. Having been informed in the course of the Class Q determination that the dwelling was to be so occupied (ie by an essential worker – and one already living temporarily elsewhere on the holding) the condition was judged fair and reasonable in the circumstances. Knights' criticism is to some extent true of any farm worker occupancy restriction – there is always a risk that the dwelling in time may cease to house the essential worker, at least for a period such as post their retirement but at least the overall pool of available farm worker dwellings is kept together intact.

In the application to remove the condition Graham Watkins and Co have submitted a contention that the Class Q dwelling is too far removed from the main farmstead to serve a key farm worker. Against this though it is also relevant to note that the farm already has one additional worker's dwelling at the farmstead approved in 2014 under SMD/2013/1024 in addition to the pre-existing main farm house. The farmstead is therefore already served by two essential worker dwellings within site and sound of the livestock accommodation. The inclusion of the Graham Watkins and Co assessment is also directly at odds with the applicant's stated plans and intentions when the Class Q application was determined.

In determining the Class Q the agent was given opportunity in an e-mail dd 16th August 2017 to comment on consideration the LPA was giving to attaching an agricultural worker occupancy condition.

The agent had written on the 7th August 2017:

> He [the Highway's Officer, David Plant] is clearly comfortable with an agricultural workers dwelling in this location, I refer to his comments on Appl. Ref SMD/2013/1024. That dwelling was built for and is occupied by our applicant's sister. Like his sister, our applicant also works full time in the family farming business and the barn conversion offers an opportunity for Mr Brain to continue to live on the farm with his partner and daughter as a separate household. David Plant (DP) reasons than an agricultural workers dwelling would reduce the use of the access to Sandon Road because the worker lives on site. Please advise us if this information is sufficient for DP to withdraw his objection.

This was forwarded to Highways and on 8th August 2017 the Highway's Officer replied to the LPA including the following remarks:

> I've re-read the application and can find no reference to this proposal being for an agricultural workers dwelling or the relocation of an existing household within the holding. If this is the case, then clearly there will be no intensification and an agricultural worker living at his place of work is something I would support. This would need to be made much more clear in the application…….?
>
> As the application will not now intensify use of the access, this is less of an issue for this application.

The Highway's concern to have clarity about the agricultural worker intention was raised again in e-mails and on the 16th August 2017 the LPA said to Highways in response that they would be asking if the applicant would accept a condition to that effect. In doing so (16th August e-mail) the LPA did also say, "If going down this route I will need to have at least a summary of the scale of the farm and the nos of workers and where they live… the point being that Highways is something we have to consider under Class Q and clearly the farm worker link is what is making this acceptable to Highways".

The agent replied 17th August:

> In reply to your e-mail confirming that county highways have no objections to an agricultural dwelling I am happy to reassure you that is the case. I am slightly concerned that the detail being asked for is more appropriate to a planning application rather than a prior notification! In the interest of progress I refer you to the details of acreage, stock levels etc. already submitted. The business employs four full-time staff, father, mother, sister & brother (the applicant) plus specialist contractors as required. The circumstances requiring an independent dwelling for Gareth are also set out in my e-mail to D.P. copied to you. Please can you confirm you are now able to move on to consider the detail of our proposal ?

The LPA took this e-mail as acceptance of the intention to condition agricultural occupancy – certainly it was not contested. The agent was though concerned at the level of detail being sought. In the event the LPA found the scale of the farm sufficiently apparent and did not seek more formal submissions about this. As noted by Knights, the LPA was not of course obliged to obtain the applicant's agreement to this potential condition.

Enforceability
Would it be practicably possible to enforce the condition?

- Unenforceable conditions include those for which it would, in practice, be impossible to detect a contravention or remedy any breach of the condition, or those concerned with matters over which the applicant has no control.

The LPA regards the condition as one commonly in use and finds no issue with enforceability. Knights say that it is not but do not specifically explain why.

Precision
Is the condition written in a way that makes it clear to the applicant and others what must be done to comply with it?

- Poorly worded conditions are those that do not clearly state what is required and when must not be used.

Again as a commonly used condition the LPA finds no issue with its precision. Again Knights say that it does not meet this test but do not specifically explain why.

Reasonableness in all other respects
Is the condition reasonable?

- Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness.
- Unreasonable conditions cannot be used to make development that is unacceptable in planning terms acceptable.

LPA consideration: The LPA was strongly minded to refuse the Class Q application as a result of the highways concerns. However, presented with an unequivocal statement that it was the applicant's intention to move from existing temporary accommodation on the farm to live in the Class Q development this was seen as giving scope for an approval if this intention could be assured in some way. The condition was seen as a way of reasonably achieving this. This is in accordance with NPPF para 54 which states "*Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations"* and is thus an entirely reasonable approach and a preferable alternative to refusal. Clearly it should not be found a disproportionate burden given that it matched the applicant's intentions anyway. Far from being unreasonable the LPA has acted constructively to enable a permission to be granted. The LPA understands the limitation of the condition in that – as a matter of reasonableness – it would not be acceptable to so confine the occupancy as to prevent immediate dependants, a widow or widower or the retired farm worker to continue to live at the dwelling. As noted above, this is just as would be the case with any farm worker restricted dwelling (or should be) but as noted above at least

the overall pool of available farm worker dwellings is kept available to support the farm business.

Highway Safety

The submitted Technical Note by Cameron Rose seeks to point out that occupation of the development following its sale on the open market would not result in any significant difference in traffic movements compared with its occupation by someone employed at the farm.

NPPF (2012) para 32 is quoted – that proposals should only be refused on highways grounds where the residual cumulative impacts are severe. The LPA notes in response that the HA made their recommendation under the same NPPF policy. Since then the new 2018 NPPF varies the assessment criteria. No longer must the impact necessarily be 'severe'. The LPA should ensure safe and suitable access for all users and ensure that any significant impacts can be cost-effectively mitigated (NPPF 108) refusing development only if there would be an 'unacceptable impact on highway safety' (NPPF 109) [or the residual cumulative impacts on the road network would be severe but this latter point is not relevant to the case here].

The agent was invited to comment further following the July 2018 revision to the NPPF. He responded saying that "the paragraphs you refer to make the point we have made in our application about scale of impact (see para 109). Also the new NPPF makes no changes to the tests for valid conditions. Please will you deal with this as submitted." Adding later: At Para 111 it advises "that significant amounts of movement should be required to provide a travel plan". You did not ask for a plan and we can draw only one conclusion.

The remainder of the Cameron Rose 'Technical Note' is concerned with comparing the traffic impacts of an open market dwelling unconnected to the farm and a new farm workers dwelling. Cameron Rose adopt an existing baseline of six dwellings accessing from Sandon Road and reason that it is appropriate to assume a working figure of 11 vehicle movements per dwelling per day. A seventh dwelling would add a further eleven movements – although not quoted in the report this would equate to a 16.6% increase over the current base line levels. If the seventh dwelling were occupied by a worker at the farm the notional daily movements would be reduced by two – a reduction of 2.6% in the total of 77 vehicle movements attributable to seven dwellings, and a figure which Cameron Rose say would not be significant.

The deciding factor for the LPA however in reaching the original conclusion to support the Class Q development was that the occupier was to be someone already living (albeit in temporary accommodation) at the farm. Thus no new traffic movements would arise as a result of that worker's accommodation switching to the Class Q development. In the LPA's assessment (adopting the Cameron Rose figures) the difference is therefore one of either zero net increase in traffic movements or a 16.6% increase if the development were to be occupied on the open market unconnected with the farm.

Other matters

CONCLUSION / PLANNING BALANCE

For the reasons discussed and set out in the report the LPA does not accept that condition 11 fails to meet any of the six tests of NPPF paragraph 206.

The submissions in the Technical Note prepared by Cameron Rose are understood but they are founded on a different basis from that underlying the LPA's assessment. Cameron Rose compare the Class Q dwelling without considering that in the case of it being occupied by the farm worker that worker will in fact be someone already living at the farm. On that basis the LPA finds no net increase in predicted traffic movements whereas if the Class Q dwelling were sold on the open market a new additional household would be created. Meanwhile the farm worker would need still to be resident at the farm. There would then be a net increase in households using the Sandon Road access.

The LPA, having been led to believe that the Class Q dwelling was to be occupied by the farm worker already resident at the farm, it adopted condition 11 as being a reasonable and effective means to avoid a wholly new additional set of traffic impacts – an increase to which Cameron Rose ascribe a figure of 16.6%. Without the scope to attach condition 11 the LPA decision would have been a refusal if it was to accept the Highways Authority's advice and recommendation. This is in accordance with NPPF para 54 which states "*Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations"*

The NPPF(2018) says that in assessing specific applications for development it should be ensured that safe and suitable access to the site can be achieved for all users. The Highways Authority's advice demonstrates to the LPA that this aim would have been at risk. The NPPF also expects decisions to ensure that any significant impacts on highway safety can be cost effectively mitigated to an acceptable degree. Given all the specific circumstances of the development Condition 11 appears to the LPA to be an entirely reasonable and justified means of ensuring highway safety in connection with this development. Without the condition a material increase in the number of households reliant on the Sandon Road access would need to be anticipated taking the number from six to seven (based on the Cameron Rose report) – an increase of 16.6%.

It is therefore found that Condition 11 remains appropriate and should not be removed.

OFFICER RECOMMENDATION : refuse

Case Officer: Arne Swithenbank
Recommendation Date: 14th November 2018

X B.J. Haywood

Signed by: Ben Haywood
On behalf of Staffordshire Moorlands District Council