

## PLANNING COMMITTEE – 5 FEBRUARY 2019

<b>Application No:</b>	<b>18/01300/FUL</b>	
<b>Proposal:</b>	<b>Application for removal of Condition 9 of planning permission 12/00604/FUL to allow retention of the mobile home in connection with established agricultural operation</b>	
<b>Location:</b>	<b>Woodside Farm Nottingham Road Thurgarton NG14 7GZ</b>	
<b>Applicant:</b>	<b>Mr C Kirk</b>	
<b>Registered:</b>	<b>08.11.2018</b>	<b>Target Date: 03.01.2019</b>
	<b>Extension of Time Agreed Until 11<sup>th</sup> January 2019</b>	

**This application is being presented to the Planning Committee in line with the Council's Scheme of Delegation as Thurgarton Parish Council has supported the application which differs to the professional officer recommendation.**

### The Site

The application site lies within the Nottingham Derby Green Belt to the south of Thurgarton. The site lies in an elevated position, almost on the brow of a hill and is set well back from the main A612 on its western side and is served by a c300 metre long access road that runs up the side of the hill.

The application site relates to an existing mobile home which is part of an established farm complex consisting of a number of large agricultural buildings to the west of the mobile home and a dwelling house and annex to the north which have a tie to the agricultural operation.

The mobile home has a residential appearance with brickwork to the lower section with render to its elevations with upvc windows, doors and rainwater goods. There is a decked area to the side. The front door is accessed by brickwork steps.

To the east and south of the site are open fields which significantly slope downwards to meet the main road, which is not visible from the top of the site and beyond are significant views across open landscape. The northern boundary of the farm is defined by woodland with a small tributary running through it, known as Spitalwood Dumble. The nearest residential property outside the application site is c180m to the north-east and a property known as The Dumble, which is on significantly lower ground and fronts the main road. To the west are four agricultural buildings where land levels continue to rise.

### Relevant Planning History

18/00761/FUL - Erection of a steel framed building to house cattle – (permitted 20.06.2018)

14/00294/FUL - Conversion of vacant outbuilding to form Annex to Main House (permitted 21.05.2014)

12/01517/FUL - Installation of 688 Ground Mounted Photovoltaic Panels (permitted 24.01.2013)

12/00604/FUL - Proposed agricultural workers dwelling and associated garage / farm office (permitted 06.07.2012) – condition 9 of this permission stated that:- *'The dwelling hereby approved shall not be occupied for longer than six months from the date of its first occupation, unless the existing mobile home has been removed from the site.'*

09/00756/FUL - Temporary siting of mobile home in connection with poultry business (permitted 13.08.2009)

04/01684/TEM - Proposed mobile home (temporary) in association with proposed 10,000 bird, free range egg production unit which was allowed on appeal in September 2005.

04/01683/FULM - Proposed 10,000 bird free range egg production unit which allowed on appeal in September 2005.

### The Proposal

This application is made under Section 73 to remove condition 9 from the planning permission granted under reference 12/00604/FUL.

Condition 9 states;

*The dwelling hereby approved shall not be occupied for longer than six months from the date of its first occupation, unless the existing mobile home has been removed from the site.*

*Reason: In recognition that the proposed dwelling is a replacement for an existing one located in the Green Belt and in the countryside.*

The application is submitted alongside an application 18/01299/FUL which also seeks consent to retain the mobile home which continues to be used in association with the agricultural operation at Woodside Farm.

### The Submission

- Site Location Plan, Drawing Ref: 118772 001
- Existing Block Plan, Drawing Ref: 118772 002
- Photographs of the Mobile Home
- Planning & Agricultural Justification Statement, by Fisher German
- Medical Information (sensitive)
- Accounts for Year Ending 2015, 2016 and 2017 for 3 separate businesses operating from the farm.

### Departure/Public Advertisement Procedure

Occupiers of three properties have been individually notified by letter. A site notice has also been displayed near to the site.

## Planning Policy Framework

### The Development Plan

#### **Thurgarton Neighbourhood Plan**

- Policy 1 – New Development
- Policy 3 – Transport Impact of Development

#### **Newark and Sherwood Core Strategy DPD (adopted March 2011)**

- Spatial Policy 1 - Settlement Hierarchy
- Spatial Policy 2 - Spatial Distribution of Growth
- Spatial Policy 4A – Extent of the Green Belt
- Spatial Policy 4B– Green Belt Development
- Spatial Policy 7 - Sustainable Transport
- Core Policy 3 – Housing Mix, Type and Density
- Core Policy 9 -Sustainable Design
- Core Policy 10 – Climate Change
- Core Policy 13 – Landscape Character

#### **Allocations & Development Management DPD**

- DM5 – Design
- DM8 – Development in the Open Countryside (material to the consideration)
- DM12 – Presumption in Favour of Sustainable Development

### Other Material Planning Considerations

- National Planning Policy Framework 2018
- Planning Practice Guidance
- Amended Core Strategy

### Consultations

**Thurgarton Parish Council** - Thurgarton PC do not object to applications 18/01299/FUL or 18/01300/FUL.

Members do continue to express some concerns on the site in question and the possibility of slurry running off the hilltop site into the drainage dyke or into adjacent properties. The Council unanimously supported the application, with the proviso that a condition should be made whereby the mobile home is not a permanent provision on the site.

**NCC Highways Authority** – This application is for the removal of Condition 9 of planning permission 12/00604/FUL to allow retention of the mobile home in connection with established agricultural operation. This is not expected to impact significantly on the public highway, and there are no alterations proposed to the existing access.

Therefore, there are no highway objections to this application.

**NSDC Environmental Services** – No comments to make.

**Agricultural consultant** - The application relates to the proposed retention of a mobile home first granted consent in 2004, which was subsequently renewed in 2009 for 18 months until 31<sup>st</sup>

December, 2010, and its removal was required no later than six months after the first occupation of the replacement farmhouse – Condition 9 of 12/00604/FUL.

The mobile home has remained on site since this time contrary to Condition 9 of 12/00604/FUL.

Woodside Farm is a mixed farm comprising a 10,000 bird free range poultry unit, 23 hectares (57 acres) of arable, a flock of 1000 ewes, and 100 suckler cows and their followers. The farming business is run as three separate sole trader businesses – Mr. I.D. Kirk, Mr. R.J. Kirk, and Mr. C.H. Kirk, the current applicant.

According to the supporting information Mr. I.D. Kirk is primarily employed on the sheep and cattle elements of the overall farm, with Mr. R.J. Kirk and Mr. C.H. Kirk employed in both the free range poultry unit, and also with the sheep and cattle.

Mr. I.D. Kirk lives in the existing farmhouse, with his family, and Mr. R.J. Kirk in the annex to the farmhouse as a dependent relative. Mr. & Mrs. C.H. Kirk occupy the mobile home, the subject of this application. It is stated in the supporting information that Mr. R.J. Kirk is a dependent relative although it does not state who he is dependent on. From the accounts submitted in support of the application I consider that as Mr. R.J. Kirk's accounts show that his net profits for the last three years are greater than those of Mr. I.D. Kirk and Mr. C.H. Kirk, he is not and cannot be a dependent of either Mr. I.D. Kirk or Mr. C.H. Kirk.

I calculate using standard manday figures from recognised sources, that the overall farming enterprise operated by the three sole traders, has a total standard labour requirement for 3.4 full-time persons, with three persons required to look after the livestock on the holding.

No details of the land farmed have been provided other than the 23 hectares (57 acres) of arable land. As the free range poultry unit is located at Woodside Farm, I consider most of the sheep and cattle are kept on grazing away from the farmstead, being brought back to the buildings for lambing and calving. I therefore, consider there is an essential/functional need for two persons to live at or near the farm buildings including the poultry unit.

The essential/functional needs of the overall enterprise are currently fulfilled by the existing farmhouse occupied by Mr. I.D. Kirk, and the annex occupied by Mr. R.J. Kirk. These existing dwellings are clearly both suitable and available to provide the necessary accommodation to fulfil the essential/functional needs of the unit.

There is no provision within the Framework for the provision of retirement homes, temporary dwellings or mobile homes. Therefore any application for a temporary/mobile home is still assessed by paragraphs 12 & 13 of Annex A to PPS7. Which although superseded by the Framework (Revised July 2018) is still considered to be a relevant and useful guide in assessing the need for agricultural dwellings especially mobile home applications. Paragraph 13 of the Annex states "If permission for temporary accommodation is granted, permission for a permanent dwelling should not subsequently be given unless the criteria in paragraph 3 above are met. The Planning Authority should make clear the period for which the temporary permission is granted, the fact that the temporary dwelling will have to be removed, and the requirements that will have to be met if a permanent permission is to be granted. Authorities should not normally grant successive extensions to a temporary permission over a period of more than three years, nor should they normally give temporary permissions in locations where they would not permit a permanent dwelling." In this case the Local Planning Authority were clear when granting consent for the permanent dwelling that the mobile home should be removed within six months of the new dwelling being occupied. Therefore, the mobile home is currently unlawful, and should be removed in accordance with Condition 9 of application reference 12/00604/FUL.

In addition to the above, paragraph 6 of the Annex states “Nor can agricultural needs justify the provision of isolated new dwellings as retirement homes for farmers.”

Paragraph 79 of the revised Framework states “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;” It does not state that a dwelling or mobile home can be granted as a retirement home for a farmer.

In conclusion, I ADVISE that there is no agricultural support for the retention of the mobile home or for the removal of Condition 9 of application number 12/00604/FUL as the existing farmhouse and annex are both suitable and available and are currently fulfilling the essential/functional needs of the farming enterprises being carried out at Woodside Farm.

**Representations have been received from 2 local residents/interested parties which can be summarised as follows:**

- Objects to the retention of a mobile home on this site and to the removal of Condition 9 of planning permission 12/00604/FUL.
- Does not consider that there is reason for condition 9 to not be adhered to.
- Questions the integrity of the planning system if the condition is removed.
- Does not consider the applicants personal living arrangements to be a planning consideration.
- Points out to various other applicants within the Thurgarton area where applications for caravans or containers have been opposed.
- Concerned that allowing the application will set a precedent for similar development in the area.
- Houses are shortly to be built in Thurgarton and this would seem to present an opportunity to acquire a house in the village rather than preserve a mobile home on the site.
- Comments that the farmhouse is supposed to replace the caravan.
- Questions why the applicant’s agent has provided detailed financial information.
- Considers that the caravan may be needed due to the diversity of activities taking lace from Woodside Farm.
- Potentially supports a personal permission for the applicant.
- Questions Council tax implications.
- States that if this application were to be approved then there would be three residential units at Woodside Farm.

## Comments of the Business Manager

### Introduction

This application is made under Section 73 of the Town and Country Planning Act 1990 to remove a condition attached to a grant of planning permission. The condition that is sought to be removed is no. 9 which required the removal of a mobile home from the site following occupation of a permanent dwelling that was built at the farm to replace this mobile home.

The NPPG confirms that in deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application.

In order to make this assessment it is therefore essential to examine why the condition was imposed in the first place. In essence the condition was imposed because permission was granted to replace the mobile home for a permanent dwelling on the site, having successfully demonstrated the functional and financial tests associated with agricultural workers dwellings has been passed. As the site lies in the Nottingham-Derby Green Belt, the condition was necessary in order to avoid an additional unnecessary dwelling in the Green Belt which would have been contrary to national and local planning policies.

As this application essentially seeks to retain the mobile home by virtue of removing Condition 9, it is necessary to consider whether the reason for the condition remains valid. This is undertaken below.

### The Principle of Development in the Green Belt

The Development Plan has changed since the 2012 permission was granted and the proposal needs to be assessed against up to date planning policy.

The Council is of the view that the Development Plan is up to date for decision making. Its Core Strategy is however at an advanced stage of Plan Review. Spatial Policy 4B (Green Belt Development) however continues to state that development in such areas will be judged according to national Green Belt policy.

Policy 1 (New Development) of the Thurgarton Neighbourhood Plan states that ‘...Development in the Green Belt will only be allowed if it comprises appropriate development in accordance with national Green Belt policy.’

The National Planning Policy Framework (NPPF) advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. It further states that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Spatial Policy 4B states that appropriate development in the Green Belt should be judged according to the NPPF.

Paragraph 145 of the NPPF directs that a Local Planning Authority should regard the construction of new buildings as inappropriate in the Green Belt. Paragraph 145 sets out exceptions that are not considered to be inappropriate development within the Green Belt, which includes the provision of buildings for agriculture or forestry.

The application seeks to retain the mobile home for residential occupation for an indefinite period and therefore I consider that the proposal must be considered as a new dwelling which would not fall within the exceptions outlined in paragraph 145 of the NPPF and would therefore be considered to be inappropriate development and thus by definition, be harmful to the Green Belt unless very special circumstances exist that would outweigh such harm.

Accordingly the principle issue in assessing this application relates to whether the applicant has demonstrated very special circumstances, which in this particular instance could be the demonstration of an essential need for an agricultural workers dwelling in this Green Belt location.

#### Whether there are any 'Very Special Circumstances'

The applicant has made a case that there are very special circumstances that should warrant the retention of the mobile home. The applicant (father) lives in the mobile home with his two sons living in the house and annex. It is claimed that one of the sons is a dependent relative (sensitive medical information has been provided) and the applicant is required to be on hand to assist with the farming needs. The case made is that the annex is occupied due to the dependence upon relatives rather than as an agricultural worker in line with the permission granted. It is argued that there is a requirement for the mobile home to be retained to meet the needs of the farming enterprise. As such the Local Planning Authority have considered whether there is a justified need for a third dwelling on the site as set out below.

Although guidance contained in Annex A of Planning Policy Statement 7 has been superseded, this guidance has been relied on by Inspectors in determination of appeals. It is considered that the main provisions are still relevant and offer a credible means of an objective assessment of the need for an Agricultural Workers Dwelling and is a useful tool in assessing whether in this instance a demonstration of essential need has been demonstrated to justify the development.

Paragraph 4 of Annex A of PPS7 states "A functional test is necessary to establish whether it is essential for the proper functioning of the enterprise for one or more workers to be readily available at most times. Such a requirement might arise, for example, if workers need to be on hand day and night:

- (i) In case animals or agricultural processes require essential care at short;
- (ii) to deal quickly with emergencies that could otherwise cause serious loss of crops or products, for example, by frost damage or the failure of automatic systems."

Paragraph 4 of Annex A of PPS7 also explains that, if there is functional requirement, could this requirement be met by another existing dwelling on the farm unit or other existing accommodation in the area which is suitable and available for occupation by the agricultural worker concerned.

Paragraph 8 of Annex A of PPS7 explains that a financial test is necessary for the purpose of demonstrating an economically viable farm enterprise, and therefore one of the last three years should have been profitable to demonstrate this fact.

Much of this rationale is included within the justification for the Council's DM8 (Development in the Open Countryside) policy. Whilst the site is not in the open countryside (as its greenbelt) this policy and justification is also a useful tool for assessment as it sets out how the Council determine agricultural workers dwellings. I consider this is relevant in so far as it is material to the consideration for consistency purposes.

The application seeks consent to retain a mobile home that was originally brought on site in 2005 in order to provide accommodation during the establishment of the agricultural enterprise. The mobile home was originally permitted by planning consent 04/01684/TEM with a condition imposed that required the mobile home to be removed within 3 years from the date of the permission and the land be restored to its former condition.

The mobile home was subsequently granted a further consent to be retained (09/00756/FUL) in August 2009, which required the mobile home to be removed and the land restored to its former condition on or before 31st December 2010. The consent limited the occupation of the mobile home to a person solely or mainly employed, or last employed in the locality in agriculture or a dependent of such a person residing with him or her or a widow or widower of such a person.

When planning permission was granted for permanent agricultural workers dwelling and associated garage / farm office (application reference 12/00604/FUL) a condition (Condition 9) was imposed which required that the dwelling should not be occupied for longer than six months from the date of its first occupation, unless the existing mobile home has been removed from the site. Although this permission was implemented and the dwelling occupied, the mobile home remains on site and continues to be occupied.

Members will note that the Council has commissioned advice from an independent agricultural consultant in order to ascertain if there might be an essential functional need for a worker to be present on site at all times which might amount to a 'very special circumstance' as required by the NPPF. The advice received is set out very clearly in full within the consultation section above. I do not intend to repeat this but I fully concur with the advice.

In summary there are already two permanent residential units at Woodside Farm to accommodate the accepted functional requirement for two full time agricultural workers. Accordingly the Agricultural Consultant considers that the essential/functional needs of the overall enterprise are currently fulfilled by the existing farmhouse and the annex occupied by the applicants sons who are employed on the farm. Both properties are suitable to provide the necessary accommodation to fulfil the essential/functional needs of the unit. Furthermore the Agricultural Consultant has reiterated that the NPPF does not state that a dwelling or mobile home can be granted as a retirement home for a farmer. Consequently it is considered that there is no agricultural support for the retention of the mobile home in this instance.

The agent has responded to the above comments that it is considered that a sufficient labour requirement has been proven. Further, they consider that the particular circumstances of this application, by virtue of the ongoing medical issues of one member of the family, provide evidence of sufficient functional need.

Further to this, the applicant's agent notes that paragraph 77 advises that in rural areas, decisions should be responsive to local circumstances and support local needs. They say that both local and national policy confirm that development for the purposes of agriculture such as this is appropriate development within the Green Belt.

Notwithstanding that the proposal is considered to relate to a residential use and not an agricultural use in the Green Belt and therefore has to be assessed against Green Belt policy as noted above, although paragraph 77 does make reference to decisions being responsive to local circumstances and supporting housing development that reflect local needs the commentary within this paragraph continues to make reference to supporting opportunities to bring forward rural exception sites that will provide affordable housing to meet local identified need. The definition of rural exception sites falls with Annex 2 Glossary of the NPPF and states that these



are small sites used for affordable housing in perpetuity where sites would not normally be used for housing. The proposal is not considered to fall within this definition given that it is seeking the retention of the accommodation to meet a personal need.

However, in further considering the functional or essential need to retain the mobile home on the site for the reasons put forward by the applicant, I have undertaken a search of *Rightmove* for properties within 5 miles of the postcode of the site which could provide alternative and appropriate residential accommodation for the applicant. This search revealed that there are a number of properties, including terraced, semidetached and flats, available with asking prices of £100,000 - £150,000. Therefore, it appears that other suitable accommodation is present which is within a reasonable distance of the site and could serve the personal needs sufficiently. Whilst I acknowledge that this search was a snapshot in time and that the housing market is subject to change, it serves as an indication that there are properties available within a realistic driving distance of the application site where the applicant could conceivably live and continue to work on the holding when required. Whilst this would be less convenient, it cannot be considered to be unreasonable for someone to have to commute to their place of work. In considering the ongoing welfare of the animals on the holding it must be remembered that there are currently two dwellings on the site and thus cover would be provided at all times to deal with onsite emergencies, regardless of the particular medical issues that have been forwarded as part of this application.

Taking the above considerations into account it is considered that although an essential/functional need for two persons to live at or near the farm buildings including the poultry unit has been demonstrated, this need is already met by the farmhouse and annex at the site which are occupied by farm workers.

Whilst I sympathize with the medical issues of one of the son's which have been advanced, my understanding is that the condition affects the worker intermittently such that there may be times when labour may need to be drafted in. However this does not justify a third residence at the site. I would draw attention to the advice received from the Council's agricultural consultant which states:

"It is stated in the supporting information that Mr. R.J. Kirk is a dependent relative although it does not state who he is dependent on. From the accounts submitted in support of the application I consider that as Mr. R.J. Kirk's accounts show that his net profits for the last three years are greater than those of Mr. I.D. Kirk and Mr. C.H. Kirk, he is not and cannot be a dependent of either Mr. I.D. Kirk or Mr. C.H. Kirk."

Taking into account all of the above I do not consider that the personal needs of the applicant outweigh the harm identified. I have to conclude therefore that very special circumstances have not been demonstrated in this instance which would outweigh inappropriate development. The proposal would be contrary to Spatial Policy 4B of the Core strategy and Policy 1 (New Development) of the Thurgarton Neighbourhood Plan as well as the NPPF a material planning consideration. The need for the condition therefore remains and I have to conclude that its removal has not been justified.

#### Other comments

The impact on the mobile home was previously found have an acceptable impact in terms of its visual appearance, amenity impacts and highway impacts and these matters are not open for debate.

## Conclusion

The NPPF indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in 'very special circumstances'. Any harm to the Green Belt carries substantial weight.

In assessing this application it is considered that the permanent retention of the mobile home as a separate dwelling house would be inappropriate development and therefore harmful to the openness of the Green Belt. Whilst the applicant has attempted to establish 'very special circumstances' it is considered that the applicant has failed to demonstrate an essential or functional need to retain the mobile home and the personal circumstances of a dependant son do not outweigh the harm. Furthermore they have also failed to demonstrate how the requirements of the business for further residential accommodation could not be fulfilled by other available properties within the locality.

Overall I consider that the substantial weight to be given to Green Belt harm is not clearly outweighed by other considerations sufficient to demonstrate the very special circumstances that are necessary to justify inappropriate development in the Green Belt. The development is therefore contrary to the relevant provisions of the NPPF, Spatial Policy SP4B of the Newark and Sherwood Core Strategy DPD (adopted March 2011) and Policy 1 (New Development) of the Thurgarton Neighbourhood Plan.

Condition 9 of planning permission 12/00604/FUL should remain and this application is recommended for refusal. Given that there is currently a breach of planning condition it is also recommended that a Breach of Condition Notice is served at the same time as the planning decision is issued to comply with the requirements of the initial planning permission.

### **RECOMMENDATION: that**

- (1) planning permission is refused for the reason shown below; and**
- (2) a Breach of Condition Notice is served at the same time to require the mobile home to be removed from the site within 6 months.**

### **Reason for Refusal**

01

The site is located within the Nottingham-Derby Green Belt. Policy 1 (New Development) of the Thurgarton Neighbourhood Plan adopted 2017 and Spatial Policy 4B of the Newark and Sherwood Core Strategy (adopted March 2011) require development in the Green Belt to be determined in line with national planning policy. These are the relevant policies from the adopted Development Plan. In the opinion of the Local Planning Authority the proposed retention of the mobile home for residential occupation in association with the farmstead constitutes inappropriate development and as such by definition would result in harm to the Green Belt. The proposal does not fall within the exceptions noted in paragraph 145 of the National Planning Policy Framework (2018). Very special circumstances that would outweigh such harm in the form of an essential or functional need for an additional dwelling have not been demonstrated. There are no personal circumstances advanced that would constitute very special circumstances either. The development is therefore contrary to the relevant provisions within the NPPF, Spatial Policy 4B and Policy 1 as set out above. Condition of 12/00604/FUL should therefore remain.

## Notes to Applicant

01

The application is clearly contrary to the Development Plan and other material planning considerations, as detailed in the above reason(s) for refusal. However the District Planning Authority has worked positively and proactively with the applicant to make some revisions to the proposal. Whilst not all problems arising can be overcome, several potential reasons for refusal have been negated.

02

You are advised that as of 1st December 2011, the Newark and Sherwood Community Infrastructure Levy (CIL) Charging Schedule came into effect. Whilst the above application has been refused by the Local Planning Authority you are advised that CIL applies to all planning permissions granted on or after this date. Thus any successful appeal against this decision may therefore be subject to CIL (depending on the location and type of development proposed). Full details are available on the Council's website [www.newark-sherwooddc.gov.uk/cil/](http://www.newark-sherwooddc.gov.uk/cil/)

## BACKGROUND PAPERS

Application case file.

For further information, please contact Richard Marshall on ext 5801.

All submission documents relating to this planning application can be found on the following website [www.newark-sherwooddc.gov.uk](http://www.newark-sherwooddc.gov.uk).

**Matt Lamb**

**Business Manager – Growth and Regeneration**

Committee Plan - 18/01300/FUL

