

Item No. 4

**Application Reference Number P/20/1020/2**

<b>Application Type:</b>	Full	<b>Date Valid:</b>	18/06/2020
<b>Applicant:</b>	Mrs Rosemary Jacobs		
<b>Proposal:</b>	Retention of agricultural dwellinghouse (without restriction to occupation as set out in condition 1 of P/86/1641/2).		
<b>Location:</b>	19A Church Road Wanlip LE7 4PJ		
<b>Parish:</b>	Wanlip	<b>Ward:</b>	Birstall Wanlip
<b>Case Officer:</b>	Deborah Liggins	<b>Tel No:</b>	01509 634733

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This item is referred to Plans Committee as the proposal is contrary to Development Plan policies and there are no provisions within the Council's Constitution to permit officers to consider the proposal within the adopted Scheme of Delegation.

**Description of the Application Site and Proposal**

The application site is located on the eastern side of Church Road as it extends southwards.

Planning permission was granted to a Mr & Mrs B Hornbuckle for the erection of the detached dwelling under application P/81/2202/2. Condition No. 5 of that planning permission stated:

*"This permission shall be implemented solely for the benefit of the applicant and shall not run with the land"*

The reason for imposing this condition stated that this was because the site lay in an area within which the local planning authority would not normally grant planning permission for residential development. The permission was therefore granted only because of the special agricultural need and the premises were to be only occupied by persons connected with agriculture."

Planning permission was applied for under reference P/86/1641/2 to retain the dwelling without restriction as to first occupancy, citing condition 5 of the original planning permission.

The 1986 planning application was subsequently granted with condition 1 stating that,

*"The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971, or in forestry (including any dependents of such a person residing with him), or a widow or widower of such a person."*

Again, this condition was imposed because the local planning authority would not normally grant planning permission for residential development in that locality and did so originally on the basis of an agricultural need for the dwelling.

The proposal now seeks to retain the development but without compliance with the condition that it is occupied by an agricultural worker, which the most recent consent was granted subject to. This application follows the grant of a Certificate of Lawfulness on 6<sup>th</sup> July 2020 which accepts evidence that the dwelling has been used in breach of the condition for a period of more than 10 years prior to the application.

Although the applicant is aware of the grant of the certificate of lawfulness, this Section 73 application is also being made to remove the condition from the original planning permission as it is now unenforceable and no longer necessary. The issuing of the Certificate of Lawfulness is therefore a material consideration in the determination of the application and one with significant weight.

## **Development Plan Policies**

### Charnwood Local Plan 2011-2028 Core Strategy

Policy CS1 – Development Strategy – sets out the housing directions for growth over the plan period and establishes a settlement hierarchy of locations in terms of their sustainability.

Policy CS2 – High Quality Design – requires new developments to make a positive contribution to Charnwood resulting in high quality inclusive design which responds positively to its context and results in places where people would wish to live. New developments should respect and enhance the character of the area, having regard to scale, density, massing, height, landscape, layout, materials and access arrangements. The policy also requires new development to protect the amenity of people who live and work nearby and those who will live in the new development.

Policy CS11 – Landscape and Countryside - requires new development to protect landscape character and reinforce a sense of place. It supports rural residential development where it has a strong relationship to the operational requirements of agriculture, horticulture or forestry.

Policy CS25 – Presumption in Favour of Sustainable Development – sets out that the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. It pledges to work proactively with applicants to jointly find solutions to approve development wherever possible to secure improvements to the economic, social and environmental conditions in an area. Planning applications that accord with the policies in the Core Strategy will be approved without delay unless material considerations indicate otherwise.

### Borough of Charnwood Local Plan

Policy EV/1 – Design - seeks to ensure a high standard of design and sets out nine design criteria which new developments should satisfy. These include the requirement for new development to respect and enhance the local environment, including the scale, location, character, form and function of settlements. Development should be of a design, layout, scale and mass which is compatible with the locality and neighbouring buildings. It should also safeguard the amenities of adjoining properties, particularly the privacy and light enjoyed by adjoining residents.

CT/1 – General Principles for Areas of Countryside, Green Wedge and Local Separation – states that development in these areas will be strictly controlled. Planning permission will be granted for the re-use and adaptation of rural buildings for uses suitable in scale and nature and small-scale built development where there would not be a significant adverse environmental impact and the proposal would (inter alia) be essential for the efficient long-term operation of agriculture, horticulture or forestry.

CT/2 – Development in the Countryside – In the countryside, development which is acceptable in principle will be permitted where it would not harm the character and appearance of the countryside.

Policy TR/18 – Parking in New Development indicates that planning permission will not be granted for development unless off-street parking for vehicles, including cycles, and servicing arrangements are included to secure highway safety and minimize harm to visual and local amenities. The guidance indicates that a dwelling of up to 3 bedrooms should be provided with 2 car parking spaces and those dwellings with more should be provided with 3. The policy does however clearly state that these standards should be used as the starting point in assessing the level of provision and represent the maximum level. The quantity of parking allowed should reflect the proposed use and the location of development, the availability of public off - street parking; the current or potential accessibility by non-car modes and the scope for practical measures to significantly reduce the use of private car trips to and from a site

## **Other Material Considerations**

### The National Planning Policy Framework 2019 (NPPF)

The National Planning Policy Framework (NPPF) sets out the Government's policies for England and how these are expected to be applied and considered in the preparation of local and neighbourhood plans. The NPPF contains a presumption in favour of sustainable development and is a material consideration in planning decisions.

Paragraph 7 states that the purpose of the planning system is to contribute to the achievement of sustainable development.

Paragraph 8 explains that achieving sustainable development means that the planning system has 3 overarching objectives, which are interdependent and need to be pursued in mutually supportive ways. The overarching aims are:

- An economic objective – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places to support growth and innovation
- A social objective – supporting strong, vibrant and healthy communities by providing the supply of housing required to meet the needs of present and future generations, and by creating a high quality built development with accessible local services;

- An environmental objective – contributing to protecting and enhancing our natural, built and historic environment.

Paragraph 10 states at the heart of the Framework is a presumption in favour of sustainable development.

Paragraph 11 sets out the presumption in favour of sustainable development and makes it clear that where there is an under-supply of housing land, the most important policies for the determination of housing proposals would be considered out of date.

Paragraph 38 indicates that local planning authorities should approach decisions on proposed development in a positive and creative way and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers should seek to approve applications for sustainable development where possible.

Paragraph 47 of the NPPF states that planning law requires that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing.

Paragraph 61 sets out that the size, type and tenure of housing need for different groups in the community should be assessed and reflected in planning policies (including but not limited to, those who require affordable housing, families with children older people, students, people with disabilities, service families, travellers, people who rent their homes and people wishing to commission or build their own homes.

Paragraph 79 states that planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply

- 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;
- The development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;
- The development would re-use redundant or disused buildings and enhance its immediate setting;
- The development would involve the subdivision of an existing residential dwelling; or
- The design is of exceptional quality as further explained in the NPPF.

Paragraph 83 sets out how planning policies and decisions should support a prosperous rural economy and states that planning policies and decisions should enable the development and diversification of agricultural and other land-based businesses and sustainable tourism and leisure developments which respect the character of the countryside.

Paragraph 109 states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Paragraph 170 states that the planning system should contribute to and enhance the natural and local environment by

- Protecting and enhancing valued landscapes, site of biodiversity or geological value and soils;
- Recognising the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland.
- Maintaining the character of the undeveloped coast, while improving public access to it where appropriate.
- Minimising impacts on and providing net gains for biodiversity including by establishing coherent ecological networks that are more resilient to current and future pressures.
- Preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability; and
- Remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

#### Planning Practice Guidance

The National Planning Practice Guidance (PPG) reinforces and provides additional guidance on the policy requirements of the Framework and provides extensive guidance on design and other planning objectives that can be achieved through getting good design. These include the consideration of local character, landscaping setting, safe, connected and efficient streets, crime prevention, security measures, access and inclusion, efficient use of natural resources and cohesive and vibrant neighbourhoods.

ID 26 - Paragraphs 001-003 states that good design matters and what this can achieve through good plan making. Paragraph 004 notes that weight can be given to outstanding or innovative design and developments of poor quality design should be refused. Paragraph 007 states that planning should promote local character. New development should be integrated within existing surroundings.

#### National Design Guide (2019)

The National Planning Policy Framework makes clear that creating high quality buildings and places is fundamental to what the planning and development process should achieve. This design guide, the National Design Guide, illustrates how well-designed places that are beautiful, enduring and successful can be achieved in practice. It forms part of the Government's collection of planning practice guidance and should be read alongside the separate planning practice guidance on design process and tools.

As well as helping to inform development proposals and their assessment by local planning authorities, it supports paragraph 130 of the National Planning Policy Framework which states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

#### The Crime and Disorder Act 1998

This places a duty on the local planning authority to do all that it reasonably can to prevent crime and disorder in its area. The potential impact on community safety is therefore a material consideration in the determination of planning applications.

#### The Leicester and Leicestershire Strategic Growth Plan 2018

This document is a non-statutory plan but has been prepared and adopted by 10 partner organisations in Leicester and Leicestershire to provide a vision to address the challenges of the region until 2050. It identifies broad locations where development should take place and the infrastructure needed to deliver it which is envisaged to be delivered through local plans.

#### The Leicestershire Highways Design Guide (2018)

This is a guide for use by developers and published by Leicestershire County Council and provides information to developers and local planning authorities to assist in the design of road layouts. The purpose of the guidance is to help achieve development that provides for the safe and free movement of all road users, including cars, lorries, pedestrians, cyclists and public transport. Design elements are encouraged which provide road layouts which meet the needs of all users and restrain vehicle dominance, create an environment that is safe for all road users and in which people are encouraged to walk, cycle and use public transport and feel safe doing so; and help create quality developments in which to live, work and play. The document also sets out the quantum of off-street car parking required to be provided in new housing development.

#### Supplementary Planning Document - Charnwood Design (January 2020)

This document sets out the Borough Council's expectations in terms of securing high quality design in all new development. Schemes should respond well to local character, have positive impacts on the environment and be adaptable to meet future needs and provide spaces and buildings that help improve people's quality of life. The document is a material consideration in the determination of planning applications.

#### Draft Charnwood Local Plan 2019-2036

The Draft Local Plan sets out the Council's preferred options for draft policies which are yet to be tested through an Examination in Public before they can become part of the development plan for Charnwood. The policies therefore carry limited weight at the current time. These include policies which would seek to make provision for at least 19,716 homes between 2019 and 2036 and require these to be delivered to a high standard of design quality.

The Lawful Use Certificate granted under P/20/0695/2 is also a relevant material consideration which carries significant weight.

#### **Relevant Planning History**

<b>Reference</b>	<b>Description</b>	<b>Decision &amp; Date</b>
<b>P/81/2202/2</b>	Erection of detached house	Granted conditionally 24/09/1981
<b>P/86/1641/2</b>	Retention of agricultural dwelling house without restriction as to first occupancy (Condition 5 of P/81/2202/2 refers)	Granted conditionally 28/08/1986

<b>P/20/0695/2</b>	Certificate of Lawfulness (existing) for breach of condition 1 of planning permission P/86/1641/2	Granted 06/07/2020
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### **Responses of Statutory Consultees**

None

### **Other Comments Received**

None

### **Non-Material Considerations which have been raised**

None

### **Consideration of the Planning Issues**

#### The Principle of the Development

A planning application under Section 73 of the Town and Country Planning Act 1990 allows for the determination of an application to develop land without conditions previously attached or with varied conditions to those originally imposed. Any permission granted to an application made under section 73 takes effect as a new, independent permission to carry out the development subject to new or amended conditions. The new permission sits alongside the original permission which remains intact and unaltered. This application is made under section 73A as it relates to a development which has already taken place and seeks to retain the development without complying with a condition upon which it was granted.

The starting point for decision making on all planning applications is that they must be made in accordance with the development plan unless material considerations indicate otherwise. Policies in the adopted Core Strategy and the saved policies in the Borough of Charnwood Local Plan are therefore the starting point for consideration.

Wanlip is identified as a small village or hamlet and ranks amongst the least sustainable location for new residential development in the settlement hierarchy set out in Policy CS1 of the Core Strategy. Such settlements are located entirely within the countryside, with no identified Limits to Development as these are the smallest villages with few or no services and facilities to meet the day to day needs of their residents. These villages therefore have much less potential to provide for a sustainable community where people can access what they need by other forms of transport than the private car.

Without any agricultural or other proven need for a dwelling in this rural location, residential development would be unacceptable in principle in such settlements and contrary to Policy CS1 of the Core Strategy and Policy ST/2 of the Borough of Charnwood Local Plan. Indeed, the original planning permission in 1981 was limited to occupation for an agricultural worker and their dependents and although granted to others in 1986, the requirement that the property be occupied in connection with the operation of agriculture or forestry was still retained. The planning status of this is unaltered and the use of the dwelling, without compliance with the condition, remains contrary to the Development Plan. However, there is a significant material consideration in this instance.

The recent grant of a Certificate of Lawfulness, (because the dwelling has been occupied in breach of the occupancy condition for a period of at least 10 years), means that the occupancy condition can no longer be enforced. The applicant has provided examples of appeals in similar circumstances where Planning Inspectors have concluded that the effect of a certificate of lawfulness was that the original condition served no useful purpose and this is the case here. The Certificate of Lawfulness is therefore a material consideration which can be afforded significant weight in the determination process and which would outweigh the usual restrictive policy considerations applicable when considering removal of the condition.

The main powers granted to local planning authorities to impose conditions are set out in sections 70, 72, 73, 73A, and Schedule 5 of the Town and Country Planning Act 1990. Section 70(1)(a) of the Act enables the local planning authority, in granting planning permission, to impose "such conditions as they think fit". This power needs to be interpreted in light of material considerations such as the National Planning Policy Framework, this supporting guidance on the use of conditions, and relevant case law.

The original planning permission granted under P/86/1641/2 included a second condition which reads:-

"The dwelling house and its environs shall not be used as a base for the retailing directly to the public of any goods, products or produce derived from the agricultural/horticultural use of the adjoining land.

REASON: The location of the property is considered inappropriate for any activity attracting members of the public; in the interests of residential amenity and highway safety and for the avoidance of doubt."

It is not proposed that this condition be re-imposed as the dwelling has lost its functional attachment to the adjacent agricultural/horticultural land. In addition, the size of the adjacent land is such that the amount of produce it could support would be unlikely to attract significant custom from members of the public. It is therefore considered that the imposition of the condition would not meet the necessary legal tests in operation today and as set out in legislation. These are that conditions should be:

- Necessary
- Relevant to planning
- Relevant to the development to be permitted
- Enforceable
- Precise and Reasonable in all other respects

It is considered that the repetition of the condition relating to direct sales of produce to the public would not be necessary for the reason set out above

## **Conclusion**

The development being applied for is essentially the same as that which has already been made lawful through the granting of the Certificate of Lawfulness. That certificate has effectively rendered the restrictive condition relating to occupation of the dwelling unenforceable. Whilst a new dwelling is not physically proposed and the building already exists, its original agricultural justification can no longer be enforced in this case. Although the granting of planning permission for the development, without complying with the condition, would be contrary to adopted policies as set out above, the existence of the Certificate of Lawfulness is a significant material consideration which is considered to override this.



**RECOMMENDATION:-**

Grant Unconditionally.

The following advice notes will be attached to a decision

- 1 DEVELOPMENT PLAN POLICIES RELEVANT TO THIS DEVELOPMENT - Policies CS1, CS2 and CS25 of the Charnwood Local Plan (2011-2028) Core Strategy and Policies EV/1 and TR/18 of the Borough of Charnwood Local Plan have been taken into account in the determination of this application.
- 2 Planning permission has been granted for this development because the Council has determined that, although it does not fully accord with the terms of the above-mentioned policies, the degree of harm that might be caused is insufficient to warrant the refusal of planning permission.
- 3 Discussion with the applicant to seek an acceptable solution was not considered necessary in making this decision. The Local Planning Authority has therefore acted pro-actively to secure a sustainable form of development in line with the requirements of the National Planning Policy Framework (paragraph 38) and in accordance with The Town and Country Planning (Development Management Procedure) (England) Order 2015.

