

PARISH Tibshelf

APPLICATION The stationing of a log cabin as a temporary occupational dwelling for a period of three years associated with the farming operation at Cedar Farm, to be occupied by an agricultural worker and family.

LOCATION Cedar Farm Chesterfield Road Tibshelf Alfreton

APPLICANT Mr Ian Rowe Cedar Farm Chesterfield Road Tibshelf Alfreton DE55 5NP

APPLICATION NO. 18/00372/FUL **FILE NO.** PP-07117493

CASE OFFICER Mr Chris Fridlington

DATE RECEIVED 11th July 2018

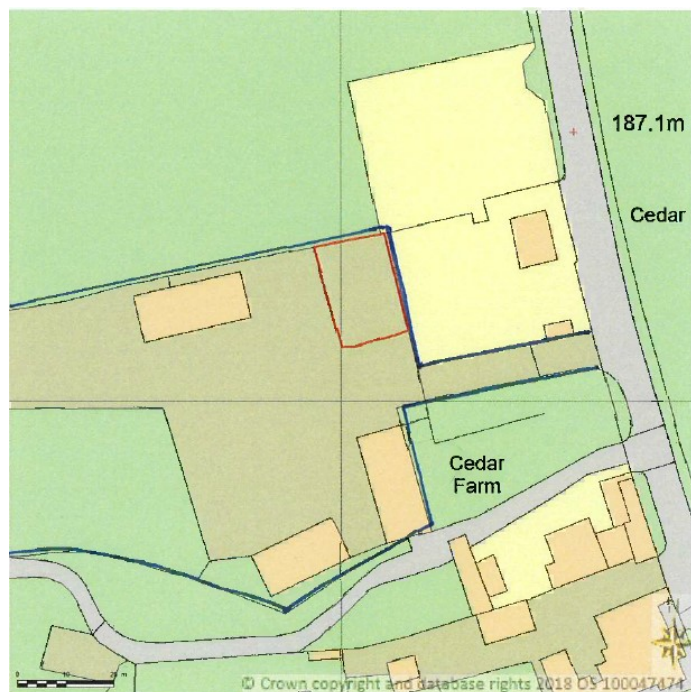
DELEGATED APPLICATION REFERRED TO COMMITTEE BY: Planning Manager

REASON: Policy implications arising from any approval

SITE

Cedar Farm is an existing farm holding that is centred on 2.43ha (c.6 acres) of land in the applicant's ownership located off Chesterfield Road (the B6039) to the north of Tibshelf. There are four existing farm buildings on this land one of which is used to accommodate cattle. The number of cattle kept by the applicant at Cedar Farm has ranged from 26 head of cattle up to as many as 56 animals as reported earlier this year when the applicant's herd included 32 breeding cows, 5 breed bulls and 19 young stock. In addition, a further 90 hectares (c. 224 acres) of agricultural land is being farmed by the applicant under various tenancy agreements.

Site Location Plan



Notably, the land at Cedar Farm was originally associated with a nearby house that is now in separate ownership. The original farm house is understood to be the southernmost property of the residential dwellings that front onto Chesterfield Road either side of the access to the land at Cedar Farm. The property known as Cedar Cottage is located on the northern side of the access. A certified caravan site lies to the south west of Cedar Farm but open countryside lies beyond the caravan site. There are also agricultural fields to the west and the north of the main group of buildings at Cedar Farm and the application site lies in countryside outside of the settlement framework for the purposes of the Bolsover District Local Plan.

PROPOSAL

The current application seeks a temporary consent for the stationing of a log cabin at Cedar Farm adjacent to the rear boundary of a neighbouring residential property known as Cedar Cottage. The log cabin is intended to provide living accommodation for the applicant for a three year period to allow the applicant to expand the existing farm business by living at Cedar Farm.

AMENDMENTS

An additional planning report submitted by the applicant was published on 4 December 2018 to allow more details of the farm business operated by the applicant to be made publically available to interested parties.

PLANNING HISTORY

In 2001, permission was granted for the erection of an agricultural building and the creation of the now existing access off Chesterfield Road to the land at Cedar Farm (00/00163/FUL). It appears from the planning history for the site, this approval arises from the subdivision of the land from the original farm house (an adjacent property now in separate ownership) and it appears that the current applicant first acquired an interest in the land around this time. Notes on other case files suggest the applicant started keeping cattle in 1999.

In 2012, planning permission was granted for construction of grain store and cattle shed at Cedar Farm and both these buildings have since been erected and are currently in use for their designated purposes (12/00163/FUL).

However, in the same year, outline planning permission was refused for a new four bedroomed dwelling house to be formed at western end of existing agricultural farm yard (12/00362/OUT). This application was refused because there was insufficient agricultural justification for a permanent new dwelling in the countryside, which was also likely to be unacceptable in landscape terms in its proposed location.

In 2013, a second application for outline planning permission for a new house at Cedar Farm was refused also on the grounds of insufficient agricultural justification for a permanent new dwelling in open countryside outside of the settlement framework (13/00035/OUT). In 2014, planning permission was granted to extend the cattle shed consented in 2012 (14/00233/FUL). At the time this application was determined, the case officer reported that

there was 35 head of cattle kept at Cedar Farm and that the applicant was now leasing a further 72 hectares of land within the District. The case officer also confirmed that the applicant continued to be a beef and arable farmer, having bought his first beef cattle in June 2009. This permission has since been commenced.

In 2016, two separate applications for conversion of agricultural barn and store to a single open market house was refused consent (16/00115/DETA2R and 16/00428/DETA2R). The refusal of the second of these applications was appealed but this subsequent appeal was dismissed on the grounds that the converted building would not provide sufficient amenities for future occupants unless they worked on the farm. Taking into account these applications sought prior approval rather than full planning permission for the proposed house; it was not possible to address these concerns by way of an agricultural occupancy condition, for example.

However, the planning history for the land does show that a significant investment in new farm buildings made by the applicant over time whilst the numbers of stock kept by the applicant has steadily increased since 1999, which in general terms is a good indication of the applicant's intentions to develop the farm business. It is also clear from the planning history that in 2012/2013 the applicant was twice unable to demonstrate that a permanent dwelling was justified and twice in 2016; the applicant unsuccessfully sought to use permitted development rights to secure an open market house.

On these points, it should be noted that the justification required for a temporary accommodation farm worker's dwelling is different to that required for a permanent dwelling and the tests applied to the acceptability of an open market house that might be consented under permitted development rights are materially different to the relevant planning considerations that should be taken into account in the determination of this application.

CONSULTATIONS

Bolsover District Council (Environmental Health) – No response to date.

Derbyshire County Council (Highways) – No objections subject to retention of existing access to Chesterfield Road.

National Trust – No response to date.

Severn Trent Water – No objections with regard to foul drainage.

Tibshelf Parish Council - objects to the proposed log cabin for the following reasons:

1. There is no agricultural justification for the proposal.
2. The application site lies beyond the edge of the settlement framework and is therefore contrary to the policies of the Local Plan.
3. Approval of the proposal would create a precedent for such development in similar locations.

PUBLICITY

The application was publicised by way of a site notice and neighbour notification. At the time of reporting, the Council had received one letter of objection to the application from the owner/occupant of a neighbouring property. The main planning issues raised in this letter include concerns about whether there is sufficient justification for the temporary dwelling and objections to its location. This letter of objection concludes by saying:

- *This is a speculative application made without any supporting evidence at all to satisfy the stringent relevant tests the Council must apply. There is no essential requirement for temporary accommodation on this field.*
- *At the moment - the Council could not credibly even make a decision in the Applicant's favour as no evidence whatsoever has been filed in support.*
- *Cedar Cottage in the open countryside. The Applicant's plans to create a "Cedar Park" of numerous dwellings as evidenced by the last application have not changed.*
- *Factually, legally, objectively - this application as with his previous 4 applications for housing must be rejected and if not rejected is susceptible to judicial review.*

This letter can be read in full on the Council's website via the planning application search function but its contents are also referred to in more detail in the following sections of this report.

POLICY

Bolsover District Local Plan (BDLP)

The saved Local Plan policies most relevant to the current application include:

- GEN 1 (Minimum requirements for development)
- GEN 2 (Impact of the development on the countryside)
- GEN8 (Settlement Frameworks)
- ENV 3 (Development in the countryside)
- HOU9 (Essential new dwellings in the countryside)

National Planning Policy Framework

The National Planning Policy Framework was revised in July 2018. The paragraphs in the revised Framework that are most relevant to the current application include:

- Paragraph 8: Achieving sustainable development
- Paragraph 11: Presumption in favour of sustainable development
- Paragraphs 47-50: Determining applications
- Paragraph 54-57: Planning conditions and obligations
- Paragraph 79: New homes in open countryside

- Paragraphs 83 & 84: Supporting a prosperous rural economy

Publication Version of the Bolsover District Local Plan

Policy LC8 in the emerging Local Plan sets out a range of criteria for assessing new dwellings in open countryside.

ASSESSMENT

Planning Policy

Saved Local Plan policies GEN8 and ENV3 only allow for residential development in the countryside outside of the settlement framework in very limited circumstances. The proposed house would be located outside of the settlement framework and therefore, must be carefully justified to meet the requirements of ENV3 that allow for development that 'needs' to be in the countryside. Saved Local Plan policy HOU9 and Paragraph 79 of the revised Framework both allow for new dwellings in the countryside to meet 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. These policies recognise that occasionally the nature of agricultural and other rural businesses make it essential for someone to live on, or in close proximity to the business.

Saved Local Plan policy HOU9 also allows for temporary accommodation to be provided for new farms and in cases where there is a fledgling business that needs on-site accommodation to be able to expand but has not yet reached a position where a permanent dwelling can be justified. This approach is consistent with national planning policies and the Bolsover District Local Plan, which promote and encourage support for rural-based enterprises and recognise the important contribution rural-based enterprises make to the rural economy. However, HOU9 falls short of setting out a basis for assessing 'essential need' and there are no other current tests in national policy or guidance to make this assessment.

Therefore, it is considered an assessment of the case for a temporary dwelling at Cedar Farm should be made with reference to policy LC8 in the emerging Local Plan, which says:

Planning permission for a new dwelling in the countryside based upon the essential needs of agriculture and forestry shall only be granted planning permission for a temporary dwelling where all of the following criteria are met:

- a) An independent appraisal is submitted with the application demonstrating that there is a functional need for the proposed dwelling which cannot be met by existing suitable accommodation available in the area, or by rearranging duties and responsibilities between workers;*
- b) The size of the proposed dwelling is appropriate to its functional need;*
- c) In all cases a financial test is also submitted to demonstrate the viability of the business proposed or as proposed to be expanded;*

- d) *The dwelling cannot be provided by adapting or converting an existing building on the holding;*
- e) *The proposed dwelling is located within or adjacent to the existing farm buildings or other dwellings on the holding;*
- f) *The proposed dwelling does not involve replacing a dwelling disposed of as general market housing*
- g) *The design of the proposed dwelling is in harmony with the landscape character type and appearance of the countryside*
- h) *Agricultural occupancy is limited by way of a planning condition*

Policy LC8 goes on to say that if, within three years, the authority remains satisfied that a dwelling is justified permission will be granted for a permanent dwelling and that successive temporary permissions will generally not be granted. These closing points in LC8 are important because if the applicant is unable to demonstrate that a permanent dwelling can be justified at the end of any three year consent; it is highly unlikely any forthcoming planning application for a permanent dwelling could be approved and the log cabin would need to be permanently removed from the site.

In other words, the provision of temporary accommodation would allow the long-term sustainability of the farm business to be proven one way or another and at the end of three years; the Council would be better placed to determine whether or not there is a case for a permanent farm worker's dwelling on the land at Cedar Farm for the following reasons:

Functional Tests

In the first instance, it is common practice to assess planning applications for new agricultural dwellings with reference to a functional test i.e. whether there is a requirement for a farm worker to live on or close to the farm most of the time and whether the need for a new house could be met in any other way. These types of tests are set out in policy LC8 (a), LC8 (b), LC8 (d) and LC8 (f). In representations on this application, several 'functional tests' were set out as follows:

- *Is there a special essential requirement to justify a temporary dwelling house on site?*
- *Is there an agricultural holding and business in operation?*
- *Is there an essential requirement to be located on site 24/7?*

In this case, the application is supported by an independent agricultural appraisal of the farm business operated at Cedar Farm, which has been completed by a suitably qualified and experienced land agent. Having visited Cedar Farm and having reviewed this appraisal and supporting documents, officers agree with the conclusions drawn in the agricultural appraisal that there is an agricultural holding operating from Cedar Farm and there is a genuine farming

business operating from the premises. Officers also agree that there is a realistic and reasonable likelihood the business will generate sufficient work for at least one full-time equivalent (1 x FTE) farm worker over the three years that the log cabin will be on site, and that the presence of a farm worker on the site will allow the existing farm business to expand.

The current farm business comprises a mixture of arable farming, which would not generate the need for a new dwelling, and cattle farming, which could. In this case, the applicant's cattle business has a particular focus on an embryo transfer process that accelerates the process of improving the genetic quality of the livestock, which then produces more valuable animals that can then be sold on at market. The applicant currently runs this process around five times a year, which means that for around fifteen weeks of the year there is a need for a farm worker to be within 'sight and sound' of the cattle from when they are close to calving until the calves have been produced and are deemed to be healthy.

The forward planning for the farm business indicates that the embryo transfer process will be carried out more frequently, which means that there would be an increasing need for a farm worker to be on site in the interests of animal welfare and to allow the applicant's plans for the business to be realised. In these respects, officers consider it is reasonable to say that this would generate an 'essential need' for a farm worker to live on the site for much of the year but temporary accommodation would be appropriate because the business has not yet been proven to be sustainable over the longer term.

Equally, only a very limited amount of land associated with Cedar Farm is actually within the applicant's control and the applicant does not own sufficient land to be certain that the existing farm business would not fail if the various leases on other land were not renewed. Nonetheless, there is sufficient evidence to suggest that the applicant would retain sufficient land over the next three years to make the business work.

A further issue with the current application is that the applicant already owns a house albeit this is located in North Wingfield. LC8(a) and LC8(f) suggest a new house at Cedar Farm would not be supported if there is existing suitable accommodation available in the area or if the application involved replacing a dwelling disposed of as general market housing. In representations, it is also said that there are houses available to buy nearby. However, it is reasonable to say that the applicant's house and the nearby houses for sale are not close enough to Cedar Farm to properly manage calving (i.e. they are not within sight and sound of the animals) and therefore cannot be deemed to be 'suitable' to meet the needs of the business. Similarly, it cannot be said that the applicant is seeking to replace an existing house that would have otherwise met the needs of the business.

Similarly, it would not be reasonable to insist the applicant adapts or converts an existing building on the holding in compliance with LC8 (d) not least because of the potential abortive costs of converting a building to living accommodation, if in three years' time, the applicant cannot provide justification for the permanent retention of that accommodation. However, despite concerns about the potential cost of the log cabin currently proposed by the applicant, it is considered that a log cabin having a floor area of around 90m², as proposed, would be of an appropriate size and scale to meet the functional needs of the farm business.

It is therefore concluded that there would be a requirement for a farm worker to live close to

the cattle kept at Cedar Farm most of the time and at this time; the need for a new house could not be met in any other way than through the provision of on-site accommodation. However, the applicant has not yet demonstrated that this relates to an essential need for a farm worker to live at Cedar Farm on a permanent basis because this essential need would only be generated by the planned expansion of the existing farm business, which in turn relies on a farm worker living on the farm. There is also some uncertainty about the applicant's current tenancy agreements and the limited amount of land in the applicant's ownership, which are issues that should be resolved if the business were to be given the opportunity to expand.

Therefore, it is considered that a three year consent for a temporary log cabin would be appropriate with due regard to the functional tests set out in emerging policy LC8 also taking into account national policies and saved Local Plan policies support the appropriate expansion of rural-based enterprises including farming. Nonetheless, failure to buy additional land during the three years following the grant of any temporary consent could mean it would be difficult to consider an application for a permanent house favourably once any temporary consent had expired. In particular, the applicant would not be able to demonstrate that his stated intentions to continue to expand the farming business at Cedar Farm were genuine; were reasonably likely to materialise; or capable of being sustained for a reasonable period of time after any temporary consent had expired.

Financial Tests

Alongside functional tests, applications for new farm workers dwellings are normally assessed against financial tests i.e. whether the farm business would be profitable and sustainable over the longer term. Policy LC8(c) says that it is necessary to demonstrate the viability of the business proposed or as proposed to be expanded before consent is granted. In representations on this application; the following questions have also been posed:

1. Is the applicants business financially viable?
2. If the applicants business is financially viable, why not apply for permanent accommodation and satisfy this test?

In this case, officers have seen sight of the applicant's accounts and they show that the farm business operated by the applicant is profitable but not yet sufficiently profitable in its own right to be able to provide a reasonable income for the applicant (or any other farm worker) without compromising the agricultural unit's ability to meet all normal outgoings including the interest on capital invested and the setting aside of an amount for necessary reinvestment. In this respect, officers are also aware of allegations of a plant hire business being operated from Cedar Farm but have not been provided with any evidence of this or found any evidence of a plant hire business being operated from Cedar Farm during various visits to the site over a number of years.

However, it is also clear from the accounts seen by officers that the applicant's different business interests have 'cross-subsidised' the expansion of the applicant's farm business over several years to allow the farm business to get to its current position whereby if it can expand further because there is a farm worker living on the site; the applicant can build a

more profitable farm business that is likely to be viable in its own right over the longer term.

Therefore, a similar conclusion to that reached on the functional tests, as set out above, can be reached on the financial tests applicable to this application i.e. the applicant has not yet demonstrated that the business would be viable over the longer term but this test would only be met by the planned expansion of the existing farm business, which in turn relies on a farm worker living on the farm. Therefore, it is considered that a three year consent for a temporary log cabin would be appropriate with due regard to the financial tests set out in emerging policy LC8, again, taking into account national policies and saved Local Plan policies support the appropriate expansion of rural-based enterprises including farming.

Other Relevant Planning Considerations

Although officers are satisfied that the current proposals would meet the applicable functional and financial tests, as set out above, it also has to be determined whether the log cabin is acceptable in planning terms with reference to all other relevant planning considerations. In this case, there are no issues relating to the impact of the proposed log cabin on ecology or archaeology and there is no reason to consider that the proposed development would have any impact on the significance of any designated or non-designated heritage asset by virtue of its location. The local highway authority have also confirmed that the site has a safe and suitable access.

Therefore, the additional planning issues to consider in the determination of this application are the design and siting of the log cabin, its potential visual impact and whether the log cabin would be unneighbourly by virtue of its siting. In these respects, saved Local plan policies GEN1 and GEN2 and national planning policies say that due regard should be paid to conserving and enhancing the intrinsic beauty of the countryside and particular attention should be paid to the amenities of existing and future occupants of land and buildings.

An assessment of these issues should also be made with reference to emerging policy LC8 (e) which requires the proposed dwelling to be located within or adjacent to the existing farm buildings or other dwellings on the holding. In addition, LC8 (g) requires the design of the proposed dwelling to be in harmony with the landscape character type and appearance of the countryside. Aside from these policy considerations, objections to the proposals have been made in representations on this application because of its potential location adjacent to the boundary of a neighbouring residential property.

Design and Siting

By virtue of the fact that the applicant is only seeking temporary consent, in design terms, it is not reasonable for the Council to expect the temporary accommodation to be anything other than a 'caravan' or 'mobile home' that meets the following statutory definitions:

Size Test

Less than 20m x 6.8m. Less than 3.05m when measured from internal floor to internal ceiling.

Mobility Test

All caravans must be movable in one whole unit when assembled. It is not necessary for a caravan to be towed, only that it is capable of being moved by road. It is the structure that must possess the necessary qualities, not the means of access to any particular road.

Construction Test Twin Units

There should be two sections separately constructed. The act of joining the two sections together should be the final act of assembly. No requirement that the process of creating the two separate sections must take place away from the site.

The log cabin proposed in this application should be able to meet these tests and there are no other reasons to consider that the log cabin would not be suitable for human habitation for a three year period despite concerns raised in the objection to this application. From visiting the site, it is also clear that any flammable substances on site could be kept far away enough away from the log cabin to avoid any fire risk. In addition, taking into account that temporary accommodation is being proposed, it is reasonable to accept that electricity and gas supplies may need to be provided by gas cylinders or generators rather than from a connection to the mains.

Similarly, whilst the amenities provided by the log cabin may not be suitable for a person or family unconnected to the farm business, they would be suitable for the applicant if he has an essential need to live close to or on the farm for operational purposes. Furthermore, LC8 (e) actually requires the proposed log cabin to be located within or adjacent to the existing farm buildings on the holding.

In terms of siting, the log cabin would be sited in a relatively discreet location mostly screened from view by the existing buildings and the existing hedgerow boundaries. It is also screened from view from the adjacent residential property by a high hedge. However, officers and the applicant agree that this location adjacent to the neighbouring property may not be the most appropriate place for the log cabin when there are other suitable parts of the land it could be sited with an equally minimal visual impact on its surroundings.

Nonetheless, officers have no overriding objections to the external appearance of the log cabin – as proposed – but a recessive external paint or stain finish should be required by a condition if a temporary consent is to be granted so the log cabin would be, as far as practicable, in harmony with the landscape character type and appearance of the countryside in accordance with LC8 (g). Officers also have no overriding concerns about the living conditions of future occupants of a temporary log cabin on the site provided those occupants are involved with the farming operations taking place at Cedar Farm.

However, it would be necessary to confirm the precise details of the log cabin to be stationed at Cedar Farm (and its method of construction) to ensure that it would be genuinely temporary accommodation that could be easily removed after three years.

Neighbourliness

It is said in representations that the log cabin will significantly impact the amenities of the

adjacent Cedar Cottage but the log cabin would not be visible from Cedar Cottage if the high hedge on the adjacent boundary was retained. It is considered the use of the log cabin as temporary accommodation would not create any additional substantial demand on water supplies in the local area as suggested in objections to this application and appropriate disposal of foul water drainage, which has been raised as cause for concern, can be dealt with by the way of a planning condition.

It is also considered that the ordinary use of the log cabin for temporary living accommodation for a three year period would not normally give rise to unacceptable levels of noise and disturbance or any other nuisance. Moreover, it is considered that the proposed use of the log cabin would not give rise to any impacts on the living conditions of the occupants of Cedar Cottage over and above the level of 'disturbance' that would ordinarily be expected and/or experienced from living next to a working farm. Therefore, the siting of the log cabin 'as proposed' would not be unneighbourly as a matter of principle.

Suggested Conditions

For the above reasons, it is considered that the current application could be approved subject to conditions given that officers consider the proposals comply with the relevant parts of saved Local Plan policies HOU9, GEN1 and GEN2 and the emerging Local Plan policy LC8.

In this case, the precise siting of the log cabin, along with precise details of its design and external finishes, could be reserved for approval if consent was to be granted for this application. Relocation of the log cabin would be appropriate given that the retention of the high hedge is actually outside of the applicant's control and relocating the log cabin may help to address some of the concerns raised in representations on this application. The external finishes of the log cabin would help it harmonise more effectively with its surroundings.

Similarly, the precise details of the disposal of foul drainage would need to be submitted to and agreed in writing by the Council if a temporary consent were to be granted for the current application to ensure that the most appropriate solution is found both from the perspective of safeguarding the residential amenities of existing properties and the future occupants of the log cabin and from the perspective of safeguarding the environmental quality of the local area.

In addition, a planning condition would also be required to ensure the access would be retained in a safe and suitable condition. An agricultural occupancy condition would also be required by LC8(h) and in this case would be necessary because the log cabin would only be suitable for occupation by individuals working on the farm and their immediate dependents. Similarly, as the case for a permanent dwelling has not yet been made out and the log cabin would not be of a suitable design for a permanent dwelling with reference to the criteria in LC8; a condition requiring occupation to cease and the log cabin to be removed within three years of the date of any temporary consent would also be reasonable and necessary.

Conclusions

In conclusion, officers consider the temporary siting of the log cabin on the land for a three year period would be acceptable in planning terms subject to the suggested planning conditions set out in the previous section of this report. Officers also consider that the

proposals for temporary accommodation at Cedar Farm would meet the relevant financial and functional tests applicable to this application. Accordingly, officers are able to recommend that the current application is approved subject to appropriate planning conditions.

In making this recommendation, officers have afforded substantial weight to the explicit provisions of saved Local Plan policy HOU8 and emerging Local Plan policy LC8 that are relatively permissive of temporary accommodation for farm workers. It is considered, these policies legitimately allow for a 'trial run' of on-site accommodation where it can be justified to allow an existing farm business to operate more effectively and/or expand its operations as in this case where there is uncertainty about the long term viability or sustainability of the farm business.

However, neither policy indicates that a permanent dwelling would 'automatically' be granted planning permission after three years unless the business case for a permanent dwelling can be made out once any temporary consent has expired. In these respects, whilst officers consider the land at Cedar Farm could be a suitable location for a permanent farm worker's dwelling if an 'essential need' can be demonstrated; the applicant may be unable to demonstrate an 'essential need' or pass the financial and functional tests for a permanent dwelling in three years' time if, amongst other things, he is unable to provide:

- Three years of audited accounts relating solely to the farm business that demonstrate that the farm business has been sufficiently profitable to pay at least a living wage to one full-time equivalent farm worker in year three;
- Proof that there is enough employment for one FTE farm worker at Cedar Farm and sufficient evidence that it is essential for that farm worker to live on the site to meet the operational needs of the farm business with reference to a formal agricultural appraisal;
- An agricultural appraisal produced by an independent and suitably qualified land agent that shows how the farm business has been developed over three years and how the business will remain viable and sustainable over the long term including reference to a formal business plan for the following five years; and
- Proof that a minimum of 50 acres of land is owned by the applicant and associated with the farm business at Cedar Farm alongside a s.106 legal agreement preventing the separate sale of any new permanent dwelling from the land and buildings in the applicant's ownership at Cedar Farm.

Other Matters

Finally, there have been issues raised in representations that are not necessarily relevant planning considerations but do require a response insofar as they are related to the planning merits of the current application. For example, it is said in representations that an approval for this application would 'create a dangerous precedent' and 'wedge open the floodgates' albeit it might also be said that 'precedent' is a legal concept that is hardly relevant to decision making on planning applications because each case is determined on its individual merits..

However, the Council has previously approved temporary dwellings for rural based enterprises on the individual merits of those cases so it would be difficult to argue that an approval of this application would in fact form a 'precedent' for others to follow in any event. Equally, the policy provision for temporary accommodation in HOU9 has been in the Local Plan since its date of publication in 2000 and officers are unaware of any significant numbers of applications since 2000 for temporary farm worker's dwellings so it is difficult to agree any approval for this application would 'wedge open the floodgates'.

As such, it is considered the issue of 'precedent' does not warrant any further consideration in the determination of this application.

It has also been said in representations that any decision to approve this application could be subject to judicial review; and to paraphrase; it is said it would be irrational and Wednesbury unreasonable to decide in the applicant's favour without reference to an appropriate agricultural appraisal or relevant financial information, amongst other things.

Notably, a similar 'challenge' was considered in *R (Embleton PC) v. Northumberland CC* [2013] EWHC 3631 (Admin) where it was said that it was no doubt open to the relevant Planning Committee to reject the planning application in front of them for a temporary agricultural worker's dwelling but it was also open to the Committee to hold that there was an essential need for a rural worker near a livestock building based on the information provided to the Committee in the officer report.

In the same case, the judge agreed that the evidence was that there was a need for a rural worker to take care of livestock once calf rearing commenced. In the judge's view the Committee were entitled to accept that evidence and it was not an irrational decision to grant a temporary permission lasting for only 3 years on this basis. In addition, the objector (making the legal challenge) criticised a report produced by an expert and these submissions were put to the Committee at the time the decision was made. However, the judge found the Committee were nevertheless entitled to reject the objector's submissions in making a planning judgement on the application and plainly did so. The objector's legal challenge was subsequently dismissed.

Therefore, in the absence of a formal pre-action letter properly setting out the precise grounds of a potential legal challenge by way of judicial review, and given that the letter of objection containing a 'threat' of judicial review does not go further than raising issues very similar to those considered in *R (Embleton PC) v. Northumberland CC*, officers do not consider it is necessary to obtain a further legal opinion from the Council's solicitors at this time. As such, the 'threat' of judicial review made in representations also does not alter an officer recommendation of conditional approval based on the individual planning merits of this case as set out in the previous sections of this report.

RECOMMENDATION

The current application be **APPROVED** subject to the following conditions:

1. No development shall take place until the precise details of the disposal of foul water drainage and the precise details of the design and siting of the log cabin, and the

method of its construction, have been submitted to and agreed in writing by the local planning authority. Thereafter, the development must be carried out in complete accordance with the approved details.

2. The log cabin hereby permitted must not have external dimensions greater than 20m x 6.8m and must not be higher than 3.05m when measured from internal floor to internal ceiling.
3. At all times during the lifetime of the development hereby permitted, the log cabin stationed at Cedar Farm for human habitation must be maintained so it is capable of being removed by road either as a single unit or in the event a twin unit is provided; it remains capable of being removed by road in two separate pieces.
4. Prior to the first occupation of the log cabin hereby permitted, the external cladding for the log cabin must be provided with external finishes first submitted to and agreed in writing by the local planning authority.
5. The existing access must remain unaltered other than any works required to provide visibility sightlines of 2.4m x 149m in both directions measured to the nearside carriageway edge prior to the first occupation of the log cabin hereby permitted. The land in advance of the visibility sightlines must thereafter be retained throughout the life of the development free of any object greater than 1m in height (0.6m in the case of vegetation) relative to the adjoining nearside carriageway channel level.
6. The log cabin hereby permitted to be stationed on Cedar Farm must not be occupied other than by a person occupied solely in agriculture and their immediate dependants.
7. The use of the log cabin for human habitation, as hereby permitted, must cease within three years of the date of this permission. Thereafter, the log cabin provided for the purposes of human habitation under the terms of this permission shall be permanently removed from Cedar Farm no later than three years and three months after the date of this permission.