

## **COMMITTEE UPDATE SHEET**

### **SUPPLEMENTARY REPORT OF THE PLANNING MANAGER**

This sheet is to be read in conjunction with the main report.

#### **Agenda Item No: 6 Planning Applications to be determined**

Planning Site Visits held on 14 December 2018 commencing at 10:00hours.

#### **PRESENT:-**

Members: Councillors T Alexander, P. Cooper, P. Cooper, D McGregor, T Munro (Chair), P Smith, R Turner (Vice Chair), D Watson and J Wilson.

Officer: Steve Phillipson

#### **APOLOGIES**

Apologies were received from Councillors PM Bowmer, J Clifton, S Peake, K Reid, and B Watson.

#### **SITES VISITED**

**1) McDonalds, Tally's End, Barlborough (18/00493/VAR)**

**2) Cedar Farm, Tibshelf (18/00372/FUL)**

**3) Land south of Creswell Model Village (18/00087/OUT)**

The meeting concluded at 11:10 hours

#### **Summary of representations received after the preparation of the original main Committee Report and any recommendation based thereon.**

#### **Agenda item No: 6 (i): Cedar Farm, Tibshelf (18/00372/FUL).**

##### Information from Agent

In response to three specific questions arising in representations on this application, the agent has supplied the following information

- The sheet showing Mr Holling as living at Ian & Suzanne Rowe's address is a typo by the agent, Fisher German. Neither of us had spotted it – many apologies. I attach the front page of the tenancy agreement as confirmation of the landlord's address [Twinyard's Farm].

- The mobile home (or log cabin) is shown as costing £35,000 in the Planning Report, at paragraph 31. Installation costs are shown to cost an extra £10,000, making a total of £45,000.
- Mr Rowe currently has 24 suckler cows (it was 21 in June) and 12 in-calf heifers (11 in June). In total there are exactly 50 female cattle on the farm as at today, including all youngstock. They are all either at Cedar Farm, or in temporary accommodation at GW Hollings' farm at Twinyards Farm until the building work is complete at Cedar Farm, which should be by 23rd December.

### Additional Letters of Representation

Since completion of the report, two additional letters of representation have been received from two local residents: one primarily re-affirming the author's reported objections to the scheme; the second restates concerns about the previous failed applications, the long term viability of the business and whether the business can be classed as a new business - albeit it is said in the same letter that the applicant *is now embarking on a new and very specialised business*.

The second letter concludes by noting: *the boundary hedge which is purportedly protecting our privacy has been intentionally left too high by the applicant and is completely out of control and clearly this was in anticipation of the assertion that any permission would not impact on us this is a very long term project, not at all novel in nature*.

### Pre-action Letter

The Council has also received a letter which has been described as a formal pre-action letter by the author threatening judicial review of any approval of this application. This letter does not raise any substantive new grounds for a legal challenge not already discussed in the original officer report and the Councillor's solicitor having read this letter has confirmed that in their view; the letter does not contain any clear grounds for judicial review.

Notably, one of the key points made in the pre-action letter is that the applicant is not running a new business and therefore cannot benefit from the policy provisions of HOU9. The actual wording of HOU9 is:

**OUTSIDE SETTLEMENT FRAMEWORKS NEW DWELLINGS WILL BE PERMITTED ONLY WHERE ESSENTIAL TO THE OPERATION OF AGRICULTURE AND/OR FORESTRY. THIS MUST BE JUSTIFIED BY A FUNCTIONAL AND FINANCIAL TEST. WHERE THE DWELLING IS REQUIRED TO SUPPORT A NEW FARMING ACTIVITY ON EITHER A NEW OR ESTABLISHED AGRICULTURAL UNIT PERMISSION WILL ONLY BE GRANTED FOR A TEMPORARY DWELLING. IF, AFTER UP TO 3 YEARS, THE AUTHORITY REMAINS SATISFIED THAT A DWELLING IS JUSTIFIED PERMISSION WILL BE GRANTED FOR A PERMANENT DWELLING. SUCCESSIVE TEMPORARY PERMISSIONS WILL NOT BE GRANTED.**

The Council's solicitor has advised that this policy adequately provides the opportunity to grant permission for a temporary dwelling with regard to the applicant's current situation if members were to choose to do so with regard to all relevant planning considerations. In addition, in one of the two representations received after the report was published, it is said

that the applicant *is now embarking on a new and very specialised business*. So, it would appear that one occupant of a nearby dwelling considers this application concerns a 'new business' despite the threat of a legal challenge from the other on the basis that the applicant's business is not a 'new business', amongst other things.

Finally, Paragraph 79 (a) of the Framework says planning policies and decisions should avoid the development of isolated homes in the countryside unless 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. HOU9 is consistent with this policy but provides for temporary accommodation where it is required to establish whether there is an essential need for a permanent new dwelling.

There are no other national policies or current planning practice guidance that set out how essential need should be assessed and the citation provided by the author of the pre-action letter asserting that *"applications need to be scrutinised thoroughly with the aim of detecting attempts to abuse the planning system and indeed that approval for temporary accommodation should not be granted in locations where a permanent dwelling would not be granted (as is the case with the history of this site)"*.

#### Parish Council

Tibshelf Parish Council wish to submit the following comments in respect of the above application:

- *We refer to the Officers Report from Chris Fridlington and the previous representations made by neighbours in respect of the application for temporary accommodation on the field next to Cedar Farm.*
- *We maintain our full objection to the Application based on the facts that this is a green field outside the settlement boundary; this is not an application linked to a new business and Mr Rowe has previously applied 4 times for a permanent house which have not been granted by BDC.*
- *We state that we believe it is clear that Mr Rowe wants to develop the site and we are not in favour of this, as we believe this would open the floodgate for further application.*
- *That should Planning Committee deem to approve the application (which we oppose in principle), we make the point that we do not believe there is a need for a 3 bedroom log cabin of the dimension applied for within the application for someone to be on site for a few days a year.*
- *We further suggest that a caravan or static caravan situated in an appropriate area (ideally away from Cedar Cottage and the barns, at the bottom of Mr Rowe's field) would be more suitable for the needs of the business and a sensible compromise.*

- *Finally stating that we believe that the cost of a log cabin and the necessary infrastructure would be disproportionate for a business as described in the application, and query if this has any relevance to the fact that on 4 occasions Mr Rowe has tried to gain permission for a permanent house.*

### Conclusions

It is considered by officers that the points raised by the Parish Council have already been addressed in the original officer report but it is open to members to consider whether the more recent advice that the hedge is in the applicant's ownership would mean that the cabin can be sited adjacent to the boundary as proposed or relocated as suggested in the original officer report. Similarly, officers do not consider that the recent representations from two local residents and/or the pre-action letter (reported above) do not change the recommendation of conditional approval made in the original officer report also taking into account the advice offered by the Council's solicitor.

#### **Agenda item No: 6 (ii): Ball Hill, South Normanton (17/00657/FUL).**

Since the publication of the officer report, this application has been formally withdrawn by the applicant. Therefore, this application is no longer pending consideration and no longer needs to be determined by the Planning Committee.

#### **Agenda item No: 6 (iii): McDonalds, Tally's End, Barlborough (18/00493/VAR).**

This application has also now been formally withdrawn by the applicant. Therefore, this application is no longer pending consideration and no longer needs to be determined by the Planning Committee.

#### **Agenda item No: 6 (vi) – Land south of Creswell Model Village (18/00087/OUT)**

No updates to report.