

6. FULL APPLICATION – RETROSPECTIVE CHANGE OF USE OF LAND FROM AGRICULTURE TO A YARD/STORAGE AREA FOR THE ADJACENT STEEL FABRICATION BUSINESS GRANTED UNDER CLEUD NP/SM/0712/0783 AND LANDSCAPING SCHEME, PITCHINGS FARM, WHITEFIELDS LANE, WATERHOUSES (NP/SM/1014/1059, P6121, 409314 350796, 2/1/2015/KW/CF)

APPLICANT: MR IAN HARVEY

Introduction

At the meeting of the Authority's Planning Committee in January 2015, members resolved to approve the current application subject to conditions that were proposed by members at the meeting. However, as minutes from the meeting show, the conditions were agreed in a format similar to the head of terms on a legal agreement, which give a summary of what is required. This is common practice and a similar approach is often used in officers' reports because fully worded conditions can be lengthy and it is not always necessary to know the precise wording of a suggested condition to understand what is intended. This approach does however mean additional wording has been added to the conditions by officers outside of the meeting so that they would be technically correct before they are imposed on any subsequent planning permission issued by the Authority.

In this case, officers have also liaised with the applicant's agent to discuss the final wording for the suggested conditions before issuing a planning permission based on the resolution members made in January. This happened because seeking agreement on conditions with an applicant before a decision is finalised is seen as best practice by the Government and current Planning Practice Guidance says it is open to both the local planning authority and the applicant to initiate discussions about conditions. The Government also says agreeing conditions is beneficial to all parties involved in the process and can increase the certainty of what is proposed and how it is to be controlled, including highlighting any condition requirements that may impact on the implementation of the development.

Subsequently, agreement has been reached on all but one of the conditions suggested by members. The disputed condition relates to a proposed restriction on the hours of operation of business activities carried out by the applicant and the disagreement on whether various forms of wording for this condition goes beyond what members intended or whether the conditions proposed by officers would be reasonable. The issues around these discussions are also complicated by the relationship between the established uses of the site and whether the draft conditions suggested by officers would be imposed in order to remedy a pre-existing problem or seek to address issues not created by the proposals in the current application.

Furthermore, the applicant's agent has made it clear that an appeal, with an application for costs, would follow if a permission was issued containing conditions that did more than restrict vehicles movements and working hours to any area other than the application site. However, amongst other things, officers are concerned that a condition drafted in these terms would not be enforceable and would fall short of what members considered was required to make the proposed development acceptable in planning terms in any event. Therefore, officers consider that it is reasonable and necessary to allow members the opportunity to consider the issues at stake before any permission is issued, in the interests of transparency and accountability.

Site and Surroundings

Pitchings Farm is situated in a relatively remote position in open countryside around 900m north-east of Waterhouses and 1.4km south-east of Waterfall on the upper slopes on the western side of the southern end of the Manifold Valley. The property comprises a detached farmhouse with a complex of modern buildings to the west, which were initially used for agricultural purposes in connection with the farm holding.

These buildings and the immediate yard areas around them are now used mostly in connection with a business known as 'Ian Harvey Fabrications Ltd', which is run from the property.

Ian Harvey Fabrications

This business operates primarily as a steel fabrication business but the business activities carried out on site include welding, cutting, spray painting, shot blasting, manufacture of steel buildings, manufacture of cattlegrids and concrete products, vehicle maintenance and fabrication repairs. The current applicant started operating the business from Pitchings Farm without planning permission in 1996 and the business has subsequently grown. The business now employs 9 full time staff and 4 part-time staff; the majority of which are said to live within or on the boundary of the National Park.

Alongside the steel fabrication business, the applicant and his family also run a sheep flock which has also recently expanded following additional land being rented in the locality and near Ashbourne. However, whilst the steel fabrication business has expanded, planning permission has not been sought or obtained for the change of use and land at buildings at Pitchings Farm from agriculture to a general industrial use (i.e. a use falling within B2 of the Schedule to The Town and Country Planning (Use Classes) Order 1987, as amended).

Lawful Development Certificate

In 2011, the Authority received complaints about the business activities taking place at Pitchings Farm and this resulted in the current applicant submitting an application for a Lawful Development Certificate (LDC) for an existing use of the land. The LDC application was submitted by the applicant primarily because he was able to demonstrate the steel fabrication business had been operating for more than 10 years from Pitchings Farm, and was therefore an established use of the land that was immune from enforcement action.

Subsequently, an LDC was granted on 25 November 2013 for an existing use of some of the land and buildings at Pitchings Farm by the steel fabrication business. The land at Pitchings Farm that was considered in 2013 to have a lawful use for the purposes of steel fabrication, and the various ancillary activities noted above, extends to approximately 3116.50m² and comprises a workshop, a range of outbuildings, a modern steel portal framed building and yard areas to the west of the farm house.

However, two additional steel frame buildings at Pitchings Farm that were erected without the benefit of planning permission were omitted from the LDC application because at the time of the application these buildings had not been substantially completed for more than four years and were therefore not immune from enforcement action at that time. Similarly, a surfaced yard area created without planning permission along the western and southern boundaries of the land included in the LDC was omitted from the LDC application and remains unauthorised. Hence the submission of the current application, which seeks retrospective planning application for the retention and use of the yard area in connection with the steel fabrication business at Pitchings Farm.

Proposal

The current application seeks retrospective planning permission for the yard area to the west and south of the land that was deemed to be in a lawful use for the steel fabrication business in 2013, and the continued use of this yard area in association with the established steel fabrication business. The current application also includes proposals for a landscaping scheme around the outer perimeter of this yard area.

The yard area (subject of the current application) is currently used for the storage of components and finished materials and for the parking of vehicles and the loading/unloading of materials into and out of the buildings on the western side of the business complex. This yard area extends to approximately 1558m² whereas the land deemed to be in a lawful use by the steel fabrication business extends to approximately 3116.50m².

The proposed landscaping scheme comprises:

- creation of a southern boundary hedge with a single hedgerow tree;
- erection of a fence across the south-west entrance boundary, including the installation of a new cattle grid and sheep gate;
- creation of a western boundary hedge with hedgerow trees; and
- extra screening provided with hedgerow trees of 1.75m – 2.0m tall oak and standard beech.

The species mix for the proposed hedgerow would be: 60% hawthorn; 20% blackthorn; 10% hazel; 5% field maple; and 5% holly.

RECOMMENDATION:

That the application be APPROVED subject to the following conditions:

Approved Use of the Yard Area

1. **The yard area hereby permitted and shown hatched purple on the submitted block plan shall not be used for any other purposes (including any other purpose in Classes B8, B2 or B1 of the schedule to the Town and Country Planning (Use Classes) Order 1987 or in any order revoking and re-enacting that order) other than for:**
 - (i) **outside storage ancillary to the steel fabrication business being operated from Pitchings Farm under the terms of the existing lawful development certificate (office code no. NP/SM/0712/0783)**
 - (ii) **for the loading and unloading of materials used or produced by the steel fabrication business being operated from Pitchings Farm under the terms of the existing lawful development certificate (office code no. NP/SM/0712/0783); and**
 - (iii) **parking/manoeuvring of vehicles used by employees of the steel fabrication business, or the parking/manoeuvring of service vehicles and delivery vehicles on site for purposes directly related to the steel fabrication business being operated from Pitchings Farm under the terms of the existing lawful development certificate (office code no. NP/SM/0712/0783)**

Restrictions on Height of Stored Materials

2. **Other than vehicles or forklifts, no materials, goods, plants, machinery, equipment, finished or unfinished products, parts of any description, skips, crates, containers, waste or any other item shall be placed, stacked, deposited or stored above a height of three metres above the existing ground level of the yard area hereby permitted and shown hatched purple on the submitted block plan.**

Restriction on the Use of Land in the Applicant's Ownership or Control

- 3. Activities incidental or ancillary to the steel fabrication business (including staff parking, outside storage of materials, finished or partly finished products, and/or plant, machinery and equipment) shall not take place anywhere on land within the blue-edging on the submitted site location plan other than:**
- (i) within the yard area hereby permitted and shown hatched purple on the submitted block plan; and/or**
 - (ii) within the area of land shown hatched yellow on the submitted block plan.**

Landscaping / Car Parking Provision

- 4. The use of the yard area hereby permitted shall cease and the yard area shall be removed and all equipment and materials brought onto the land for the purposes of such use, together with materials resulting from the demolition of the yard area shall be removed and the land restored to its former condition within 3 months of the date of failure to meet any one of the requirements set out in (i) to (v) below:-**
- (i) by 31 March 2015, a planting scheme shall have been carried out in complete accordance with the layout shown on the amended landscaping plan received by the National Park Authority on 22 January 2015 with hedgerow trees of 1.75m – 2.0m tall oak and standard beech, and a species mix of 60% hawthorn; 20% blackthorn; 10% hazel; 5% field maple; and 5% holly for the proposed hedgerow;**
 - (ii) within three months of the date of this decision, a scheme for allocated vehicle parking spaces within the yard area hereby permitted shall have been submitted for the written approval of the National Park Authority and the scheme shall include a timetable for its implementation.**
 - (iii) if within 11 months of the date of this decision the National Park Authority refuse to approve a parking scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.**
 - (iv) if an appeal is made in pursuance of (iii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.**
 - (v) the approved schemes shall have been carried out and completed in accordance with the approved timetable.**

Replacement Tree Planting

- 5. If within a period of five years from the date of the planting of any tree or hedgerow plant in accordance with the approved landscaping scheme, subject of condition 4 (i) above, that tree or hedgerow plant, or any tree planting or hedgerow planting in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the National Park Authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the National Park Authority gives its written consent to any variation.**

Retain Vehicle Parking Spaces

6. **Once the allocated vehicular parking spaces required by condition 4 (ii) (above) have been provided on-site, they shall be maintained free of any obstruction to their designated use for staff parking throughout the lifetime of the development hereby permitted.**

Restriction on Permitted Development Rights

7. **Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting or amending that Order with or without modification), no cranes, mobile cranes, gantries, flood lighting or any other temporary or permanent structure of a similar nature shall be erected on the yard area hereby permitted and shown hatched purple on the submitted block plan without the National Park Authority's prior written consent.**
8. **Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting or amending that Order with or without modification), no buildings, ancillary outbuildings, storage containers, caravans, or any other permanent or temporary structure of a similar nature, shall be erected on the concrete yard area hereby permitted and shown hatched purple on the submitted block plan without the National Park Authority's prior written consent.**
9. **Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting or amending that Order with or without modification), no gates, fences, walls or other means of enclosure shall be erected within the red-edged application site as shown on the submitted site location plan other than the cattle grid and sheep gate shown on the amended landscaping plan received by the National Park Authority on 22 January 2015.**

External Lighting

10. **The yard area hereby permitted and shown hatched purple on the submitted block plan shall not be illuminated by any source of external lighting at any time after 6pm or before 8am without the National Park Authority's prior written consent**

Delivery Times

11. **No heavy goods vehicles (i.e. larger vehicles constructed for transporting goods with a gross weight more than 3.5 tonnes) shall make deliveries to the steel fabrication business at Pitchings Farm or leave Pitchings Farm on weekends or bank holidays or before 6.30am nor after 6pm on weekdays (i.e. Monday - Friday).**

Hours of Operation

12. **No activities related to the operation of the steel fabrication business shall take place (i) within the yard area hereby permitted and shown hatched purple on the submitted block plan; and/or (ii) within the area of land shown hatched yellow on the submitted block plan on Sundays or Bank Holidays, or before 6.30am nor after 6p.m. on weekdays (i.e. Monday - Friday) or Saturdays.**

Key Issues

- Whether proposed Conditions 11 and 12 are relevant to the development to be permitted.

History

February 1993 – GDO consent granted for the erection of an 18.2m x 12.2m implement shed.

July and September 2011 – two separate enquiries received from local residents raising concerns that the metal fabrication business had been operating from the site for some years. The main concerns related to the number and extent of HGV's using the narrow lanes between Waterhouses and Pitchings Farm, together with the creation of unauthorised passing places along the lane.

25 November 2013 – LDC granted in respect of the existing use of land and buildings immediately to the west of the farmhouse by the steel fabrication business operating from Pitchings Farm.

Several detailed representations were received from local residents at the time the LDC was being considered, which strongly challenged the lawfulness of the activities taking place at Pitchings Farm. However, the LDC application was also accompanied by compelling supporting evidence from third parties that demonstrated the business had been operating for a period in excess of 10 years in the manner described by the LDC issued in 2013.

Consultations

County Council (Highway Authority) – No response to date.

District Council – No response to date.

Parish Council - No objections to these plans being passed because the Parish Council do not see these plans causing any detrimental effect to the surrounding area.

Representations

Two letters of representation have been received from local residents. One of these is a comprehensive letter of strong objection and the other letter endorses the representations made in the detailed objection letter. This letter also objects to this rubber stamping of the applicant's unregulated activities, which have a huge impact on the village of Waterfall and Waterfall Lane. It states that a few trees will not help and urges that relocation to a proper site is required.

The detailed letter of objection makes the following points:

- Important that the case officer considers the planning history of the site, specifically the papers including Enforcement and Legal Services consideration of the Certificate of Lawfulness, their previously submitted evidence and statutory declarations relating to the case and more recently photographs of the type of HGV traffic generated.
- The tenor of the submitted application seems to be more about the landscaping scheme than the change of use of the land to yard areas and that this change of use is a foregone conclusion because of the issuing of the Certificate of Lawfulness.
- The application forms do not clearly identify the proposed use as B2 General Industry.
- The application form refers only to 'Commercial Use' of the land and not what particular

aspect of the B2 use the land will contain.

- The application form states that the site cannot be seen from a public footpath, which is clearly not the case.
- No opening hours are stated, when unsocial hours are a concerning feature of this business.
- The supporting statement emphasises the farm diversification aspect of the family enterprise, which is not the case as the application in his own declaration during the consideration of the Certificate of Lawfulness stated that there was a rough proportion of 70% fabrication use and 30% agricultural/residential use.
- The applicants have used the pre-application discussions with the Authority's Landscape Officer relating to the landscaping scheme to infer that the Authority is in agreement with the proposals and that a landscape scheme overcomes any difficulties. This is, however, in conflict with the Sandford principle which gives greater priority to the conservation and enhancement of the natural beauty within the National Park.
- The use of the planting scheme demonstrates that what it seeks to envelop is damaging to the local landscape. Additionally, the form of geometric enclosure is inconsistent with the local landscape characteristics and their setting as required by GSP2.
- The proposed retrospective change of use to yard areas is the most significant part of the submitted proposal. This should be seen as a major extension to the principle business use, which was in itself unauthorised for many years. To grant an approval would only serve to embed an unacceptable use in an inappropriate location.
- The agent suggests that use of this land will have no impact on traffic when logically it increases the capacity of the site to store and manufacture their products and its loss would limit that capacity and activity across the board.
- The applicants chose to achieve their development of the site by stealth and would have succeeded completely had it not been reported to the Authority by members of the public. To approve the application would be damaging to public confidence in the planning system generally and to the reputation of the National Park Authority as a guardian of the National Park and the public interest.
- The development would be contrary to policy GSP1 as it is unsustainable and the majority of the workforce has to commute to the site.
- Contrary to GSP3 as it adversely impacts on the living conditions and amenities of the community and uses Whitefields Lane which is signed as "Unsuitable for HGVs". The proposal is not an agricultural or land management business that conserves or enhances the valued characteristics of the landscape, nor does it constitute agricultural diversification.
- Contrary to the DS1 Development Strategy policies as it is not development in or on the edge of a rural settlement – it is in open countryside. Paragraph 13.17 of the Core Strategy refers to successful businesses whose increased scale of operation is not in keeping with the National Park. This states that a small scale business may be established on a farm, but as it grows and increase employees, deliveries etc. it should consider moving to a more sustainable location in a town or village.
- Contrary to Core Strategy policies E2, E2B, and D. These policies only encourage small scale business if there is a link to agriculture as the primary business. There is no link in this case. Business uses in more remote areas of the countryside will not be permitted

and proposals to accommodate growth and intensification need to be considered carefully in terms of the impact.

- Contrary to T1A and T1E, proposed change of use will not conserve or enhance the valued characteristics of the National Park and impacts in environmentally sensitive areas should be minimised.
- No transport plans have been submitted and the supporting information is silent about traffic generation and vehicle type and movement related to the area of land for which a change of use is required.
- The Parish Council's response of no objections is contrary to their comments on the Staffordshire Moorlands Development Framework where they were recorded as being adamant that they did not want any development that increased traffic on Waterfall Lane.
- The use is not sustainable and has outgrown its site. It is timely to send the strongest signal that further growth beyond the Certificate of Lawful Use will not be allowed.

This letter is available to view on the public file.

Main Policies

Relevant Core Strategy policies include: DS1, GSP1, GSP2, GSP3, L1, E2, T1 & T4

Relevant Local Plan policies include: LC4, LE4, LT2 & LT9

In this case, policy DS1 and E2 of the Core Strategy and saved Local Plan policy LE4 are especially relevant because the current application concerns the expansion of an existing business in a location outside of a named settlement. These policies are relatively supportive of employment uses, especially where they are related to the diversification of an existing farming business, but stress employment uses are only permissible where they do not compromise landscape conservation objectives and where they are not unneighbourly. The provisions of E2(D) and LE4(b) otherwise set out specific criteria to assess proposals for the expansion of existing businesses in the open countryside.

E2(D) says proposals to accommodate growth and intensification of existing businesses in the open countryside will be considered carefully in terms of their impact on the appearance and character of landscapes. LE4(b) says outside named settlements, expansion of existing industrial and business development will not be permitted unless:

- i. it is of a modest scale in relation to the existing activity and/or buildings, and does not extend the physical limits of the established use;
- ii. it does not harm and wherever possible secures an enhancement to the amenity and valued characteristics of the area and the appearance of the site; and
- iii. new or extended buildings are clearly justified and proper consideration has been given to the possibilities of using appropriate existing buildings to meet the needs of the business.

DS1, E2 and LE4 are also supported by a wider range of design and landscape conservation policies in the Development Plan including policies GSP1, GSP2, GSP3 and L1 of the Core Strategy and saved Local Plan policy LC4, which seek to safeguard the valued characteristics of the National Park by promoting sustainable developments that would be of a high standard of design and sensitive to their landscape setting.

Traffic management and vehicular movements associated with the existing employment uses at Pitchings Farm have been raised in representations. Core Strategy policies T1 and T4 and saved Local Plan policies LT2 and LT9 presume against developments that would result in traffic generation particularly where it would result in the more intensive use of minor roads by heavy goods vehicles and large vehicles transporting goods.

It is considered that these policies in the Development Plan are consistent with the more recent national planning policies in the National Planning Policy Framework ('Framework') taking into account the following paragraphs from the Framework which are considered to be of particular relevance to the current application.

Paragraph 14 of the Framework states that at the heart of national planning policy is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-making.

Paragraph 17 of the Framework states, amongst other things, that a set of 12 core land-use planning principles should underpin both plan-making and decision-taking. Amongst these 12 core principles is that planning should proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Planning should also contribute positively to the living conditions of existing communities.

Paragraph 28 of the Framework states, amongst other things, that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, local and neighbourhood plans should, amongst other things, support the sustainable growth and expansion of all types of businesses and enterprise in rural areas, both through the conversion of existing buildings and well-designed new buildings.

Paragraph 34 of the Framework states plans and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. However this needs to take account of policies set out elsewhere in this Framework, particularly in rural areas.

Paragraph 115 of the Framework states that great weight should be given to conserving landscape and scenic beauty in National Parks, along with their wildlife and cultural heritage.

Use of Planning Conditions

Section 70(1)(a) of the Town and Country Planning Act 1990 enables the Authority in granting planning permission to impose "such conditions as they think fit". This power must be interpreted in light of material factors such as the National Planning Policy Framework, the recently published Planning Practice Guidance on the use of conditions, and relevant case law.

The Framework says local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of planning conditions but planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

Planning Practice Guidance says whether it is appropriate for the Authority to impose a condition on a grant of planning permission will depend on the specifics of the case. Conditions should help to deliver development plan policy and accord with the requirements of the National Planning Policy Framework, including satisfying the six tests for conditions. The six tests must all be satisfied each time a decision to grant planning permission subject to conditions is made.

This Guidance also says when used properly, conditions can enhance the quality of development and enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of the development. It is also highly relevant to this application that this Guidance otherwise states that a condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development.

Assessment

In making a resolution to approve this application at the meeting of the Authority's Planning Committee in January 2015, members considered the following key issues:

- whether the principle and the scale of the development complies with the terms of Core Strategy policy E2 and Local Plan policy LE4;
- whether retention of the development would intensify the established employment uses of land at Pitchings Farm and/or generate unacceptable levels of vehicular movements; and
- whether the proposed development is otherwise acceptable in physical landscape terms, and therefore in compliance with Core Strategy policies GSP1, GSP2, GSP3, and L1, and Local Plan policy LC4.

In general terms, it was agreed by members that they could support the growth and expansion of the established business in accordance with the provisions of E2 and LE4 through granting retrospective planning permission for the yard area subject to a number of conditions. The conditions suggested by members were mainly required to prevent any future intensification of the activities taking place on the yard area and to mitigate the visual impacts of the yard area in order to safeguard the character of the surrounding landscape in accordance with the requirements of Core Strategy policies GSP1, GSP2, GSP3, and L1, and Local Plan policy LC4.

One of the key conditions suggested by members reflected the recommendation made by officers that a revised planting scheme submitted by the applicant should be carried out because the planting is necessary to make the yard area acceptable by minimising its visual impact. The planting would increasingly screen the yard over time whereas in the current situation, the yard area, and the various activities carried out on the yard, detract from the character of the surrounding landscape. The proposed planting scheme would also serve an additional planning purpose by containing the existing industrial uses of the land at Pitchings Farm within a clearly defined area.

Condition 4 (above) contains this requirement for the implementation of an amended planting scheme and has been written in the form of a model condition that addresses a situation where development has already been carried out and further works are required to remedy any harm to amenities arising from retention of the development. Condition 5 seeks to ensure that any plants that need replacing because they have been damaged, or have died, for example, are replaced over a five year period from the time of the permission. The applicant has no issue with these conditions or the requirement also contained in Condition 4 to submit and agree parking arrangements for staff vehicles on the yard area. Condition 6, which is also agreed, simply requires the parking area not to be obstructed and to remain available for its designated use.

Conditions relating to staff parking were suggested by members because cars are being parked on a roughly surfaced area outside of the red-edged application site. Similarly, various items associated with the steel fabrication business and not related to farming activities were seen stored in various ad-hoc locations in fields away from the yard area. Therefore, members sought to address further 'development creep' and the associated harmful impacts of untidy land by suggesting a condition restricting activities carried out by the steel fabrication business to the

area covered by the LDC and the yard area within the red-edged application site. These restrictions are set out in Condition 3 (above) and have been agreed with the applicant.

Notably, members considered that exceptional circumstances existed in this case that warranted removing permitted development for both uses of the yard area and for further operational development on the red edged application site (Conditions 7-9). Members also sought restrictions on external lighting (Condition 10) and the height of stored materials on the yard area (Condition 2). Straightforwardly, the conditions seeking to manage further development on the yard and limit the height of stored material on the yard have been agreed by the applicant and would be reasonable and necessary to ensure that mitigation for the development secured by the planting would not be compromised by items being stored or built on the yard or otherwise brought on to the yard that would be much higher than the proposed hedgerow.

It was also determined that control should be retained over the design of any perimeter fences because even at a maximum height of 2m, many different types of security fences would have a detrimental impact on the visual amenities of the local area and the character of the landscape setting of Pitchings Farm.

The restriction on the use of the yard area has also been agreed with the applicant and is considered to be justified because it seeks to address the issues of whether retention of the yard area would intensify the established employment uses of land at Pitchings Farm and whether the scale and size of the industrial uses on the land are acceptable. In other words, this condition is intended to maintain the 'status quo' because members agreed that any further intensification of the business in such a remote and isolated location in open countryside with poor access to the primary road network and in an area of particular scenic beauty would not be acceptable in planning terms.

Therefore, it is considered Conditions 1-10 meet the six tests for planning conditions set out in the Framework and Planning Practice Guidance, and would generally enhance the quality of the development carried out so far whilst enabling a resolution of approval for the yard area when it would otherwise have been considered necessary to refuse planning permission. It is also considered that these conditions have been tailored to tackle specific problems, and seek to mitigate the adverse effects of the development, as opposed to standard conditions or conditions that would impose broad unnecessary controls. However, these conditions do not cover any restriction on the hours of operation by the business as suggested at the meeting of the Planning Committee in January.

Initially, it was suggested at the January meeting that the hours of operation should be restricted to 9am-5pm Monday to Friday, with no operations taking place on bank holidays or weekends. This suggestion prompted further discussion and, when asked, the applicant said that he could agree a restriction on operations at bank holiday and weekends but not week days. The applicant's agent has since clarified the applicant meant he would agree to restricting deliveries to and from the yard area on bank holidays and weekends but this restriction would not relate to working hours. The applicant's agent has taken further legal advice and says the applicant would appeal any conditions which attempt to restrict vehicles movements and working hours to any area other than the application site outlined in red.

However, since this correspondence, officers have reviewed the evidence submitted with the LDC application and the supporting statement submitted with the LDC application by the applicant's current agent states:

Since the establishment of the business at Pitchings Farm in 1996, the usual business hours have been based on a six day week Monday to Saturday, 6.30am to 6pm. Although this does increase and decrease depending on workload at the time. Occasionally it has been necessary for production and manufacturing work to be carried out on a Sunday. With regard to the deliveries to the site, these are usually from Monday to Friday with occasional Saturday

deliveries. Deliveries are mainly during normal business hours.

Statutory declarations made by the applicant and other interested third parties support this statement, and say unambiguously that the industrial uses taking place on site have not been intensified for more than ten years. Therefore, officers consider there is a clear benchmark to work to in terms of the pre-existing 'hours of operation' for the steel fabrication business at Pitchings Farm, which is based on the applicant's and his agent's own evidence and is reflected in the terms of Condition 11 and 12 (above).

Officers consider that a restriction on deliveries and operating hours to match the pre-existing situation (as per the evidence in the LDC application) would be reasonable and necessary to limit any further intensification of the steel fabrication business to protect the tranquillity and amenities of the local area especially at times when the nearby footpaths would be more likely to be used. In particular, it would be reasonable and necessary to prevent an increase in the times large delivery vehicles would use Whitefields Lane, especially when there would be more likelihood of conflict with recreational users of the Lane, which is also a public right of way, if deliveries to and from the site were to increase in number over the weekend or bank holidays.

Equally, restricting hours of work to the pre-existing situation would restrict vehicular movements through Waterfall at times when residential properties would be more sensitive to noise disturbance, and reduce the need for extensive external lighting for yard areas after dusk, which would have a harmful impact on dark skies and the tranquillity of the area. Therefore, there would be good planning reasons to impose a restriction on the times of deliveries to and from the yard area and on working hours to match the pre-existing situation to safeguard the amenities of the local area and to conserve the valued characteristics of the National Park in accordance with the provisions of Core Strategy policies GSP1, GSP2, GSP3, and L1, and Local Plan policies LC4.

Moreover, Pitchings Farm does not benefit from good access to the primary road network. Therefore, increasing numbers of large vehicles using Whitefields Lane to distribute goods to and from the business would conflict with the strategic objectives of T1 and T4 of the Core Strategy and saved Local Plan policies LT2 and LT9; and an intensification of the use of Whitefields Lane by large vehicles arising from the retention of the yard area would harm the general amenities of the local area and the specific provisions of E2(D) and LE4(b). Therefore, Conditions 11 and 12 are considered to be reasonable and necessary and would be imposed on any permission for a proper planning purpose.

In these respects, it is considered the need for Conditions 11 and 12 arises from the effect of the retention of the yard area and, in particular, how retention of the yard area has been integral to a degree of intensification of the pre-existing uses of the whole site rather than the physical characteristics of the yard area itself, or the precise nature of the activities carried out on the yard taken in isolation. For example, although the LDC certificate demonstrates that the provision of the yard area has not resulted in a 'material intensification' of the pre-existing use of the site, this does not rule out a situation where there has been 'mere intensification' of the industrial use of the site with adverse side effects.

Moreover, any development can, in theory, be disaggregated into its separate elements but that is not the approach normally adopted for planning purposes. For example, the current development proposals could be 'disaggregated' by looking at the physical impacts and the use of the red-edged application site in isolation rather than consider the potential effects of creating a larger planning unit in a B2 use for general industry through the retention of the yard area. In these terms, it is reasonable to describe the primary purpose of the creation of the yard area as being to extend and expand the established steel fabrication business with the physical operations of concreting and the planting scheme being the subsidiary and facilitating components of the development proposals.

Nonetheless, by virtue of its size and scale, the likelihood is that the provision of the yard area would intensify the established use of the site (although, as the LDC indicates, this is not to the point where a material change of use of the land has taken place). Whilst it is understandable that the applicant would not want any unduly onerous restrictions to be placed on the established uses of the business, it is not uncommon or unlawful for conditions to be imposed that seek to modify the existing operations of a business where retention of both the pre-existing operations and the proposed development would result in the site being over-intensively developed.

In this case, the adverse planning consequences arising from the creation of the yard area would include the likelihood of larger delivery vehicles moving to and from the site than before because of the increased storage capacity on-site. A further example of adverse planning consequences would arise from the erection of a building on site without planning permission that opens on to the new yard area and is used for the more efficient construction of concrete products. Whereas concrete was previously hand-mixed on site (according to evidence accompanying the LDC application), ready mixed concrete is now delivered to the site by a concrete mixer lorry, which has the consequence of an additional and different type of large vehicle moving to and from the site that has been said to have had an adverse side effect on the amenities of the local area since the yard area was constructed.

The unauthorised building has been designed so that concrete products dry quicker to improve efficiencies in the production process, compared to the previous situation where a lambing shed was used to make concrete products. The increased storage area would clearly allow the steel fabrication business to expand by facilitating far more efficient processing of deliveries and orders, and so on. Therefore, it is reasonable to conclude the creation of the yard area has intensified industrial uses carried out on the site as a whole which has given rise to adverse side effects on the amenities of the local area. These effects could be minimised by preventing any further intensification of 'occasional deliveries' on a Saturday and 'occasional' hours of work on a Sunday.

It is also understood that Condition 12 would remove some flexibility the applicant may have had to work extended hours to meet the needs of the business. However, the impacts on the business of a tighter restriction on working hours have to be balanced against what is reasonable in the context of the current development proposals. The yard area for which retrospective planning permission is sought extends to approximately 1558m² whereas the land deemed to be in a lawful use by the steel fabrication business extends to approximately 3116.50m². Therefore, the current proposals to retain this yard area conflict with policy LE4(b), which says that outside named settlements, expansion of existing industrial and business development will not be permitted unless it is of a modest scale in relation to the existing activity and/or buildings, and does not extend the physical limits of the established use.

Consequently, officers consider that a restriction on working hours is reasonably related to the development because the yard area is not a 'minor development'; it is an exception to policy that constitutes a significant expansion of the pre-existing steel fabrication business, which indicates the primary purpose of the creation of the yard area was to extend and expand the established steel fabrication business. It is also reasonable to consider the provision of the yard area has intensified the industrial uses carried out on the site as a whole. This is especially the case where the established uses of the site and the activities taking place on the yard overlap, and the area covered by the LDC and the yard area are so interlinked, both functionally and physically, that it is not possible to distinguish distinct areas of the site that could or should be treated separately.

Notwithstanding these issues, the applicant has not been able to agree the wording of Conditions 11 and 12 and his agent is suggesting that an appeal may follow with an application of costs if these types of conditions were imposed on any permission. However, it also has to be taken into account that the integrated nature of the extended site would mean that restrictions on

working hours and delivery times would need to be applied to the business as a whole in order to be enforceable in any meaningful way and to properly safeguard the amenities of the area. For example, a condition may be unenforceable because it is impossible to detect a contravention; more commonly it will merely be difficult to prove a breach of its requirements. In this case, if restrictions were only placed on the yard area it would be difficult, if not impossible, to prove that a large delivery vehicle seen travelling to or from the site was not being loaded and/or unloaded on the yard area unless the actual site was being monitored at that time. Conversely, if large delivery vehicles were moving to and from the site but being loaded and/or unloaded on land covered by the LDC then a restriction solely on the use of the yard area would not prevent harm to the amenities of the local area.

Therefore, it is considered that restrictions on the site as a whole are necessary to make the operation of the extended business premises acceptable in planning terms and to make Conditions 11 and 12 enforceable. As these conditions are intended to prevent harm to the amenities of the local area, which is clearly likely to result from the unfettered operation of the core of the 'established business' from within the extended business premises, then they will not be so difficult to monitor, as those affected by contravention of its requirements are likely to be able to provide clear evidence of any breaches. Moreover, the requirements of the conditions are considered to be more precise than the applicant's suggested condition and therefore would give the applicant and any interested third parties a clearer understanding of what the applicant is expected to do.

It might also be said that planning enforcement issues at Pitchings Farm that have resulted in an LDC being granted for a steel fabrication business open countryside and the erection of a further two buildings without the benefit of planning permission may have already resulted in undermining public confidence in the planning system to some extent. Therefore, the enforceability of restrictions on working hours and/or delivery times and how effective the restrictions would be is also a particular matter of public interest in this case.

Finally, the determining factor in many applications where the acceptability of a particular development is contentious often relates to whether the adverse impacts of granting planning permission for the proposed development would significantly and demonstrably outweigh the benefits of doing so. In other words, an assessment is often carried out as to whether the development proposals constitute sustainable development when assessed against policies in the Framework when taken as a whole.

In this case, if the primary development was simply the physical operation of creating a small subsidiary yard area for activities incidental to the established use of the land alongside the associated landscaping then it would be easier to argue that the benefits of allowing the business to operate as it did before would outweigh any harm associated with retaining the yard area. It would also be much easier for the applicant to argue that Conditions 11 and 12 seek to remedy a pre-existing problem or issue not created by the proposed development.

However, the yard area has extended the land used by the established steel fabrication business by around 50% and is used extensively for purposes ancillary to the established uses of the site. Therefore, as also noted above, it is reasonable to conclude that the primary purpose of the development is to extend the pre-existing steel fabrication business and there is a clear risk that retention of both the pre-existing operations and the proposed development would result in the site being over-intensively developed.

In this context, the benefits arising from allowing the 'pre-existing' part of the business to operate earlier or later than the core hours stated in the LDC application, or accept deliveries at weekends would not demonstrably outweigh the harm arising from the more intensive industrial use of a large industrial site created by the expansion of the pre-existing steel fabrication business through the provision of the additional yard area.

These harmful impacts on amenity would be a consequence of allowing an over-intensively developed industrial use of the land and would be exacerbated by the associated harmful impacts of the larger industrial unit at Pitchings Farm on the intrinsic character and beauty of the National Park, together with the unsustainable location of the business outside of a named settlement and away from the primary road network. This means that the development proposals would conflict with core planning principles in the Framework. Consequently, if Conditions 11 and 12 were found not to meet all six tests for conditions but it was agreed that retention of both the pre-existing operations and the proposed development would result in the site being over-intensively developed, then planning permission should be refused for the current application.

Conclusion

For the reasons set out in this report, officers have concluded that Conditions 11 and 12, together with Conditions 1-10, do meet the six tests. They would enable the yard area to be retained when it would otherwise have been necessary to refuse planning permission for the application and they reflect the intent of the conditions suggested by members at the meeting of the Planning Committee in January 2015.

Accordingly, the application is recommended for approval in accordance with the resolution made in January 2015 by the Planning Committee, subject to the conditions listed in this report.

Human Rights

Any human rights issues have been considered and addressed in the preparation of this report.

List of Background Papers (not previously published)

Nil