DC APL 685

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Your Ref:
Our Ref: 08/00978/FUL and 09/00029/FUL
Date: 6 May 2009

Hinckley & Bosworth Borough Council

A Borough to be proud of

The Planning Inspectorate
Room 3/22
Temple Quay House
2 The Square
Temple Quay
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BS1 6PN

Dear Sirs

Appeal by: Graham Wragg
Site: Common Farm, Barton Road, Carlton, Nuneaton CV13 0RL
Reference: APP/K2420/A/09/2099681/NWF and 2101955/NWF

Please find attached two copies of the Rule 6 Statement for the above appeals with all necessary supporting documents.

Yours faithfully,

T. Darke

TRACY DARKE
Development Services and Policy Manager

Visit our website at: www.hinckley-bosworth.gov.uk

SCANNED

DC APL POE

GRAHAM WRAGG

TOWN AND COUNTRY PLANNING ACT 1990

SITE AT COMMON FARM, BARTON ROAD, CARLTON, NUNEATON, CV13 0RL

PROOF OF EVIDENCE OF DAVID J PRICHARD

PLANNING APPLICATION REFERENCE NOS:
08/00978/FUL AND 09/00029/FUL

PLANNING INSPECTORATE REFERENCE NOS:
APP/K2420/A/09/2099681/NWF AND 2101955/NWF

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DEVELOPMENT SERVICES

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QUALIFICATIONS AND EXPERIENCE

I am a Chartered Town Planner and Director of Planning in the firm of Marrons, a Planning Solicitors and Planning Consultancy Practice. Prior to joining Marrons in May 2007, I was a Partner in the firm Farrell Bass Prichard, independent Planning and Property Consultants, for fourteen years. I hold an Honours Degree in Geography and the Degree of Master of Arts in Town and Regional Planning from the University of Sheffield. I am a Member of the Royal Town Institute and have over twenty-five years experience in town and country planning.

Within Marrons, I am responsible for providing planning and economic consultancy advice to a wide range of clients, including residential house building companies, commercial property companies, industrial, commercial and retail organisations, land owners, developers funding institutions and local planning authorities.

Before forming Farrell Bass Prichard, in 1993, I held positions with Bernard Thorpe and then DTZ Debenham Thorpe. Prior to joining Bernard Thorpe, I worked as an Economist Planner for Warwickshire County Council, specialising in economic planning matters and before that I worked on a wide range of planning matters with Surrey County Council.

1. INTRODUCTION

1.1 These appeals relate to the decision of Hinckley & Bosworth Borough Council to refuse planning permission for two identical planning applications for the conversion of Barns B and C at Common Farm, to form two residential dwellings. The appeal proposals form part of the regeneration of a larger complex of buildings at Common Farm which I describe in Section 2 of my evidence. There is no objection to the appeal proposals on the part of the Council save for the partial rebuilding of the south eastern range of Barn C.

1.2 Planning application 08/00978/FUL (Appeal Ref: APP/K2420/A/09/2099681/NWF) was determined by the Council on 24th November 2008. Planning application 09/00029/FUL (Appeal Ref: APP/K2420/A/09/2101955/NWF) was determined on 13th March 2009. The second application (09/00029/FUL) was accompanied by additional supporting information that sought to address the Council's concerns and overcome the reasons for refusal and avoid the need to pursue matters to appeal.

1.3 The Council refused planning permission in respect of both applications for the following reasons:

> "1) The proposed development represents a substantial amount of re-building to Barn 2 that would be tantamount to the building of a new dwelling in the countryside. The proposed development is therefore contrary to Government guidance in Planning Policy Statement 7 (Sustainable Development in Rural Areas), the Regional Spatial Strategy for the East Midlands (RSS8), Policies BE1, BE20 and NE5 of the adopted Hinckley & Bosworth Local Plan and the Borough Council's adopted Supplementary Planning Guidance on the Conversion of Rural Buildings.
>
> 2) The approval of this proposal would set a precedent for the consideration of further applications of a similar nature, to which the Local Planning Authority would also object but which would consequently be difficult to resist, it would therefore be contrary to the aims of Policy BE1 of the adopted Hinckley & Bosworth Local Plan."

1.4 A note to the Applicant appended to decision notice 08/00978/FUL, confirmed that the plans used in the determination of the application comprised: 5960B-B-C-Floor Layout A; 5960P-B-C-Elevations (A); 5960P-B-C-Survey; 5960P-04-Site.

1.5 A note to the Applicant appended to decision notice 09/00029/FUL confirmed that the plans used in the determination of each application comprised; Site Location Plan, 5960A-01, 5960B-B-C-Floor Layout (A), 5960C-06D, 5960P-B-C-Elevations (A).

1.6 In a further attempt to avoid the current inquiry a third application proposing the same development as that the subject of the current appeal was submitted on 26th March 2009 (09/00237/FUL). This application was supported by further additional information addressing the issues concerning the Council. The application was refused permission on 5th May 2009 on the casting vote of the Committee chairman.

1.7 The evidence which I have prepared and provide for these appeals (Ref: APP/K2420/A/09/2099681/NWF and APP/K2420/A/092101955/NWF) in this Proof of Evidence is true and has been prepared in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

1.8 My evidence to this inquiry is structured as follows:

In Section 2 I describe the appeal site and the appeal proposals and set out the background to the appeal;

In Section 3 I set out the planning policy framework against which the appeal proposals fall to be considered;

In Section 4 I consider the Council's reasons for refusal; and

In Section 5 I set out my conclusions.

2. THE APPEAL SITE AND THE APPEAL PROPOSALS

i) The Appeal Site

2.1 The appeal site is located at Common Farm, Barton Road, Carlton, and extends to an area of 0.15 hectares. The appeal site is occupied by two barns – Barns B and Barn C but intrinsically and indivisibly forms part of a larger complex of buildings at Common Farm which have progressively been refurbished, extended, rebuilt and converted from agricultural use into a well designed and high quality mixed residential and industrial use in the period since November 2005.

2.2 The applicant acquired Common Farm in order to acquire premises suitable to accommodate the relocation of his hosiery manufacturing business – Trafford Knitwear Ltd – from old, cramped and outmoded premises at John Street/New Street, Hinckley. The B1 and B8 units located on Common Farm will accommodate the company's manufacturing and storage operations, whilst the residential element of the complex will house the applicant and his two sons. The family's presence on the site will assist the efficient operation of the company and provide 24 hour on-site security.

2.3 The appeal proposals represent the final element of a £3.0 million investment in the site (net of site acquisition costs) and will secure the long-term accommodation requirements of Trafford Knitwear and the continued operation of the company, which currently employs just under 20 people. It is expected that the relocation of the manufacturing operation will take place at the end of the summer/early autumn 2009.

2.4 The appeal proposals relate to the conversion of Barn B and Barn C to residential use, together with the use of the existing site access serving the remainder of the complex to serve the proposed residential development the subject of the current appeals.

2.5 Whilst the planning applications the subject of the current appeals seek planning permission for the development set out above, planning permission for the residential use of Barns B and C (together with the industrial use of Barn D) was originally granted in 2005 (Ref: 05/00197/FUL). The planning permission has been implemented: the conversion to industrial use of Barn D is complete, the residential conversion of Barn B is complete and Barn C is partially complete. The reason for the submission of the applications the subject of the current appeals relates to a requirement to rebuild part of the south eastern range of Barn C which was demolished during the course of the conversion works to enable the barn to be used for residential purposes. The rebuilding works required to Barn C have necessitated the submission of further planning applications and it is these works, to which the Council object, which are at issue in the current inquiry.

ii) Background to the Appeal

2.6 The site history of the appeal site as it relates to the current appeals is set out in the Statement of Common Ground.

2.7 In summary, it is the case that the appeal proposals form part of a larger complex comprising a farmhouse and former agricultural buildings that have been converted, rebuilt and/or extended in accordance with previously granted planning permissions to form a complex of residential and commercial buildings to accommodate the relocation of Trafford Knitwear from outmoded premises in Hinckley.

2.8 An aerial photograph of the Common Farm complex, prior to its conversion, is reproduced at Appendix 1.

2.9 The complex comprising the buildings making up Common Farm is shown on Plan 1, which identifies the buildings currently occupying the farm site, designated A-J. The buildings comprise a farmhouse (Building A), together with a range of traditional 19th/20th century brick and tile buildings (Buildings B- D), together with three larger 20th century agricultural buildings (Buildings E – J). The farm originally comprised part of a larger agricultural holding but much of the farm land was sold off some time ago and the current complex occupies a site of some 9.0 hectares.

2.10 Building A comprises the farmhouse. The latter was originally a somewhat dilapidated three-storey structure. Planning permission was granted in May 2007 for the extension and alteration of the farmhouse, to include the removal of a third storey (permission reference no: 07/00324/FUL). During the course of implementation of that planning permission, the farmhouse walls originally intended to be retained were found to be structurally unstable. Given the necessity to demolish the original walls of the building a further planning application was submitted to undertake the demolition and to construct a new dwelling. In design terms the new dwelling was the same as that approved in 2007. Planning permission for the new dwelling was granted by the Council in June 2008 (Ref. 08/00414/FUL). Buildings E – J comprise three former agricultural buildings granted planning permission for conversion to B1/B8 use, together with the creation of "link" buildings to join the three separate former agricultural buildings, under the terms of planning permission reference no: 07/00172/FUL permitted in April 2007.

2.11 Barns B and C (the appeal buildings) were granted planning permission for conversion to residential use, and Barn D to light industrial use, under the terms of planning permission reference no: 05/00197/FUL granted in November 2005. The development permitted under the terms of that planning permission also provided for an independent access to serve Barns B and C, as shown on Plan 2.

2.12 It is therefore the case that in the period since November 2005 the buildings comprising Common Farm have been granted planning permission by the Local Planning Authority for renovation, conversion, rebuild and extension to form a complex of three residential dwellings, together with a total of 864 sq ms of mixed B1 and B8 accommodation. The comprehensive restoration of the Common Farm complex has been considered by the Council to be entirely acceptable in planning terms and to accord with the provisions of the development plan.

2.13 Each of the planning applications submitted to the Local Planning Authority for the works described above have been accompanied by relevant supporting information to inform the Council's consideration of the applications. In each case, this included a report on the structural condition of the respective properties to confirm to the Council that at the time the applications were made the respective buildings were in a suitable condition to be converted and used for the purposes proposed.

iii) The Appeal Proposals

2.14 The current appeals relate to Barns B and C. As noted above, planning permission was originally granted for the conversion of these two barns to residential property in 2005 (05/00197/FUL).

2.15 The application relating to the conversion was informed by a structural engineers report (reproduced at Appendix 2), which addressed the condition of existing buildings on the site. In that report, (which refers to Barn C as Barn 2), Barn C is identified as being in the worst state of repair of the buildings inspected and most in need of structural work to make it good. The report states:

> **"Barn 2 is the only barn where significant structural works will be required which is due to its height and "modifications" over the years. However, as previously mentioned, the introduction of necessary strapping and the utilisation of the existing buttresses will restore its long term stability."**
>
> (Structural Inspection, 2005, para. 26.0)

2.16 During the course of works to convert Barns B and C, it became apparent that the condition of the southern range of Barn C had worsened. Recognising that the increased deterioration of the building would necessitate an increase in the extent of demolition and rebuilding previously approved to Barn C, the applicant's agent contacted the Council in July of 2008 to advise them of this change in circumstances and to enquire if the flank walls to the south eastern range of Barn C could be taken down and rebuilt using reclaimed bricks and stonework, pursuant to the 2005 planning permission. The Council advised that a further planning application would be required.

2.17 The requisite planning application (ref: 08/00978 – APP/K2420/A/09/2099681) was submitted on 9th October 2008. It was accompanied by a further Structural Inspection Report which stated with regard to Barn C that:

> **"3.3 The north gable is abutted by a later single-storey outbuilding. There is a further single-storey outbuilding which extends from the West flank wall. Both flank walls are of solid brickwork constructions, built off plinth bases constructed using random stone. The South gable has been rebuilt using common bricks. The wide entrance door in this gable is formed under pre-cast concrete lintels. Two internal cross walls in the barn have been removed up to eaves level. Steel beams have been inserted to support the upper level cross wall brickwork, which, in turn, supports the roof purlins.**
>
> **Survey Findings**
>
> **4.1 We found that both the West and East flank walls had rotated outwards. This movement is clearly a consequence of the previous demolition of the buttressing cross walls and the removal of the intermediate floor structure. The rotation had given rise to the formation of wide separation cracks, 25 mm – 40 mm between the flank walls and both gables. As well as being out of plumb the flank walls are also noticeably distorted at eaves level.**
>
> **4.2 Whilst the reconstruction of the roof and first floor would return some stability to the structure, the movement now evident in the flank walls is so severe that they can no longer be salvaged. Furthermore, any attempt to execute rebuilding or repair works on the scale required to convert the building would present unacceptable safety hazards to the workforce."**
>
> (Structural Inspection Report Barn C,
> Diamond Wood Partnership)

2.18 The condition of Barn C was independently corroborated by the Council's Building Control Section as noted in the Council's Committee Report of 24th November 2008, as set out in para 2.25 below.

2.19 Prior to the determination of the planning application and contrary to the express instructions of the contractor working on site undertaking

the residential conversion works, the south-western and south-eastern flank walls and the south gable wall of the southern range of Barn C were demolished down to the level of the stonework. The bricks making up the demolished elements of the wall are stored on site for re-use.

2.20 In Appendix 3, photographs 1 and 2, the south-eastern part of Barn C is shown prior to the commencement of the conversion works.

2.21 These photographs show the stone walls at the base of the structure – with an overall height of approximately 0.65 ms with brickwork above. It can be seen that the open ended south gable wall of Barn C, together with its concrete lintel, is of a later date than the flank walls of the building and it is concluded that this part of the structure was rebuilt prior to 2005 in common bricks of a form not in keeping with the original bricks used on site.

2.22 Photograph 3 shows the south-eastern walls of Barn C following the demolition work referred to at para 2.18 above.

2.23 Application Drawing no: 5960A/01 is a survey drawing which shows the current extent of Barn C following the demolition works.

2.24 The application (08/00978) relating to the rebuilding works to Barn C was reported to the Council's Planning Committee in October 2008.

2.25 With regard to the structural condition of the building, the Officer's Report confirmed the structural deterioration of Barn C as follows:

> **"The Borough Council's Building Control Section comments that in his opinion at the time the original structural survey was carried out, in August 2005, it was correct. At site inspection since, in relation to other development on the site, the condition of this building was noted to be in a very poor state of repair and was considered to be dangerous, with various cracks around the structure but the biggest concern was the bulges and leaning external walls, even with the ties and restraint that was present within the building. The major factor to the worsening of the movement of the building was the bottom 1.5 ms of the wall being constructed of stone, which appeared to (be) acting as a pivot to the brickwork above and not giving it sufficient lateral support or resistance to overturning that had started to occur."**
>
> (Committee Report, pg 76)

2.26 The Officer's Report noted that the principle of conversion of the appeal premises to residential use was acceptable and this had been confirmed in the context of the earlier 2005 permission. The Committee Report stated in this regard:

> **"The principle of converting these rural buildings was established in 2005, the design was considered to be acceptable as the approved scheme respected the character and architectural features of these rural buildings and the structural survey stated that there was a limited amount of rebuilding required in order for the conversion to take place."**
>
> (Committee Report, pg 79)

2.27 The Committee Report also referred to the planning permission granted at the same site for the rebuilding of the farmhouse (see para 2.9 above). The Committee Report stated in this regard:

> **"Members will recall that the application in relation to the rebuilding of the farmhouse on the site Building Control were able to verify the structural report in relation to the stability of the building, there had also been a recent Inspector's appeal decision in relation to a replacement dwelling on another site where the Inspector had found that whilst retention of part of the structure was possible, rebuilding was considered acceptable as it was more cost effective and environmentally beneficial as a new dwelling would have better energy efficiency and lower CO_2 emissions, and it was considered that the to be special justification for a replacement dwelling under Policy RES10. This application differs in that it relates to conversion of a barn not previously a dwelling so RES10 does not apply in this case."**
>
> (Committee Report, pg 79)

2.28 Notwithstanding the information supplied to the Council as part of the application, Officers then erroneously reported to Members the overall scale and extent of the rebuilding proposed by the application. The Committee Reports states:

> **"However, this application now proposes a significant amount of rebuilding, in particular to the high barn element. The rebuilding works now proposed will result in almost two thirds of the floorspace of Barn B being new build. The application is therefore contrary to the aims of Policy BE20 and NE5."**
>
> (Committee Report, pg 79)

2.29 As demonstrated at para 4.5 et. seq. below, the level of rebuilding is significantly less than that advised to Members in the November 2008 Committee Report.

2.30 In overall terms the Committee Report concluded that the proposed rebuilding of Barn C would result in no harm to any relevant interest of acknowledged importance: with regard to impact on the countryside, the Committee Report noted that the site was not overly prominent and that the barns were screened from the main road by a mature hedge; it noted that policy requirements allowed for the change of use, re-use and extension of existing buildings providing the development would not have an adverse affect on the appearance or character of the landscape and was in keeping with the scale and character of existing buildings and the general surroundings and in this regard concluded:

> **"It is considered that the proposal does not have an adverse affect on the countryside subject to the domestic elements being controlled by the removal of "permitted development" rights in accordance with the previously improved application."**
>
> (Committee Report, pg 80)

2.31 Noting that the application proposals would result in the previously permitted new access way not now being provided the Committee Report noted that this was a positive benefit of the application proposals stating:

> **"In this respect, the proposal will have a lesser impact on this countryside location than the previously approved scheme."**
>
> (Committee Report, pg 80)

2.32 Notwithstanding the absence of any harm to any relevant interest of acknowledged importance, the Committee Report concluded that planning permission should be refused solely as a result of a conflict with policy – which is noted above was based on an erroneous assessment of the scale of rebuilding required. The Committee Report concluded:

> **"In summary, the conversion of existing redundant agricultural buildings in the countryside to residential use can be acceptable in principle subject to the applicant demonstrating that the buildings are capable of conversion in structural terms. Whilst the proposal is considered to have no greater impact on the openness and appearance of the countryside than the previous permission, due to the circumstances met through the deterioration of the building and the carrying out (of) the works, Barn 2 needs considerable rebuilding and as such will result in a building which is tantamount to a new dwelling in the countryside. Therefore the application does not meet the criteria set out**

in the Adopted Hinckley & Bosworth Local Plan and is recommended for refusal."

(Committee Report, pg 80)

2.33 In my view, the conclusion set out in the Committee Report is non-sequitous: given the proposed development has no conflict with policy in respect of its impact on the countryside and is a form of development acceptable in principle and of no greater impact than the previously permitted development, which, axiomatically, accorded with policy, there is no basis for the conclusion that planning permission should be refused.

2.34 Planning permission in respect of that application was refused on 24th November 2008.

2.35 A further planning application (Ref. 09/00029/FUL) seeking the same planning permission as that sought in the earlier application refused by the Council, but furnishing the Council with additional information, was submitted on 16th January 2009 in order to avoid the necessity of pursuing matters to appeal. Notwithstanding the additional information provided to the Council, Officers considered no change was warranted to their previous recommendation, concluding that:

"Therefore there is no change to the consideration of the previous application, no mitigation that would allow the setting aside of policy and this application is also recommended for refusal".

(Committee Report, pg 43)

2.36 The application was refused planning permission by the Local Planning Authority on 13th January 2009 and is one of the two applications the subject of the current appeals (APP/K2420/A/09/2101955/NWF).

3. PLANNING POLICY FRAMEWORK

3.1 For the purposes of this appeal the development plan comprises the East Midland Regional Plan (RSS8) and the Hinckley & Bosworth Local Plan. National planning policy guidance set out in PPS1, PPS 3, draft PPS4 and PPS7 together with the Council's adopted SPG on the Conversion of Rural Buildings are material considerations bearing on the appeal.

i) East Midlands Regional Plan (March 2009)

3.2 Regional planning guidance is set out in the East Midlands Regional Plan (RSS8).

3.3 The integrated regional strategy within which the Regional Plan has been developed has as part of its spatial objectives the efficient use of existing physical infrastructure to include the optimisation of the use of previously developed land. The appeal proposals are consistent with these objectives.

3.4 Whilst seeking to focus major new growth and regeneration within the region's principal urban areas, the Spatial Strategy also acknowledges the need to create sustainable rural communities to include ensuring appropriate levels of new growth to allow new communities to flourish and thrive and for new development to be consistent with, inter alia, the guidance set out in PPS7. As part of a mixed use development, including provision of new employment opportunities at Common Farm, the appeal proposals are consistent with this part of the Regional Plan's Spatial Strategy (para 2.1.9).

ii) Hinckley & Bosworth Local Plan

Local Plan Policy NE5

3.5 Local Plan Policy NE5 is concerned with development in the countryside. The supporting text to the policy (para 5.6.2) notes that the Council is anxious to safeguard the appearance and amenity of the countryside. As noted above, the rebuilding of Barn C (as well as the remainder of the appeal proposals) is acknowledged by the Council as not having an adverse affect on the countryside and is in keeping with the scale and character of existing buildings and the site's general surroundings and will accord with the Council's stated objectives in this regard.

3.6 The Plan notes (para 5.6.4) that the siting of buildings in the countryside is important in view of the visual impact such development can have. The appeal proposals are acknowledged by the Council as occupying a site which is not overly prominent and the barns are screened from the highway by a mature hedge. Furthermore, the appeal proposals cannot be unacceptable in siting terms as the

development proposed in the appeal applications is identical to that previously permitted.

3.7 Policy NE5 is a criterion based policy. Parts (a) and (c) relate to development which cannot be located within or adjacent to an existing settlement and to sport and recreation use respectively and are not relevant to the current appeals. The Policy provides that planning permission will be granted for built development in the countryside provided that, inter alia, it is:

b FOR THE CHANGE OF USE, REUSE OR EXTENSION OF EXISTING BUILDINGS...

and where the following criteria are met:

i) IT DOES NOT HAVE AN ADVERSE EFFECT ON THE APPEARANCE OR CHARACTER OF THE LANDSCAPE

ii) IT IS IN KEEPING WITH THE SCALE AND CHARACTER OF EXISTING BUILDINGS AND THE GENERAL SURROUNDINGS

iii) WHERE NECESSARY IT IS EFFECTIVELY SCREENED BY LANDSCAPING OR OTHER METHODS

iv) THE PROPOSED DEVELOPMENT WILL NOT GENERATE TRAFFIC LIKELY TO EXCEED THE CAPACITY OF THE HIGHWAY NETWORK OR IMPAIR ROAD SAFETY.

3.8 The current appeals do not relate to the establishment of a new use not previously authorised by the Council but propose the use of existing barns as dwellings. Policy NE5 (b) therefore provides the relevant policy context within which the appeal proposals fall to be considered. With regard to the policy's four criteria it is evident that the appeal proposals do not conflict with the policy:

i. the restoration, rebuild and repair of Barn C will result in a form of development on the site which in terms of scale, mass and general appearance, has existed for many years and which is part of the established landscape context. The restoration and rebuild of Barn C will therefore not have an adverse effect on the character and appearance of the landscape: this is acknowledged by the Council in the Committee Report of October 2008;

ii. the restored, rebuilt and repaired Barn will be of a scale entirely in keeping with the character of existing building and the general surroundings: this is also acknowledged in the Committee Report of October 2008. This necessarily follows as the restored building will be essentially the same as that which has stood on the site for many years;

iii. with regard to screening, the Council acknowledge that the appeal site is not prominent and is screened from the main road;

iv. with regard to highway issues, there is no objection to the appeal proposals from the Highway Authority, subject to the imposition of conditions and, as recorded in the Committee Report (Pg. 80), the revised access arrangements:

> **"proposes utilisation of the existing access rather than providing a new roadway within the field to the north of the site. In this respect, the proposal will have a lesser impact on this countryside location than the previously approved scheme."**

3.9 On this basis it is demonstrably the case that the application proposals do not conflict with Local Plan Policy NE5.

Local Plan Policy BE1

3.10 Local Plan Policy BE1 is concerned with design and the siting of development and seeks to secure a high quality of design in development and is a criteria based policy. Criteria (b) loss of open space, (c) safety and security, (f) general public accessibility, (h) effect of adjacent uses, (i) impact on residential amenity, and (j) comprehensive development, are not directly relevant to the appeal proposals. With regard to the other criteria:

3.11 Criterion (a) requires that development complements or enhances the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features. As the appeal proposals will result in the restoration of Barn C to its original condition, and the completion of a dwelling previously approved by the Council, this requirement of the policy is clearly satisfied.

3.12 Criterion (d) requires that proposals encourage, inter alia, recycling. As noted above, the rebuilding works will wherever possible recycle the materials used in the original structure;

3.13 Criterion (e) relates to landscaping. The rebuilding of Barn C will result in the general enhancement of the site's current unkempt appearance with obvious benefits for the appearance of the landscape in the immediate locality of the site; and

3.14 Criterion (g) relates to highway, parking and associated issues and there is no conflict with the policy in this regard: the Council acknowledge the revised access arrangements are more acceptable in countryside terms.

3.15 The Policy concludes by stating planning permission will be granted for proposals relating to residential development which:

a. provide a strong common link between the proposed buildings, spaces and landscape features and the character of the local area;

b. ensures an adequate degree of amenity and privacy is provided by the space between the buildings; and

c. provides sufficient garden area with boundary treatments that reflects existing features in the area.

3.16 The appeal proposals satisfy these requirements of Policy BE1: the rebuilding of Barn C will (i) renew the common links between the buildings on the site and the surrounding landscape features; (ii) provide for adequate amenity and privacy and (iii) provide sufficient garden space; while boundary treatments, in terms of surrounding hedgerows remain as previously approved.

Local Plan Policy BE20 – Re-use and Adaptation of Rural Buildings

3.17 Policy BE20 is a permissive, criterion based policy which provides that permission will be granted for the re-use and adaptation of rural buildings unless various criteria are offended.

(a) Criterion (a) requires that the proposed use will not have an adverse affect on the appearance or character of the landscape: it is acknowledged in the Committee Report (Pg. 80) relating to the appeal proposals that:

> **"the proposal does not have an adverse effect on the countryside subject to the domestic elements being controlled by the removal of "permitted development" rights in accordance with the previously permitted application."**

(b) Criterion (b) provides that planning permission for re-use will not be granted if the building in question is in a structurally unsound condition and thus incapable of conversion without significant adaptation and rebuilding. It is the case that Barn C was in a structurally sound condition when planning permission was first granted for its conversion to residential use in 2005 and was capable of conversion without significant adaptation as demonstrated by the accompanying Structural

Report and by the Council's decision to grant planning permission for the conversion works. However, it is also the case that a need for some rebuilding work was identified in the Structural Report. In the intervening period and during the course of works to implement the 2005 planning permission, the building's condition had deteriorated such that part of the building now needs to be rebuilt. It is the case that the building itself is not structurally unsound – evident by the fact that part of the building has already been converted to residential use. As set out in subsequent sections of this Proof of Evidence the element of rebuilding required is not considered to be so significant as to give rise to a conflict with this criterion of Policy BE20;

(c) It is not the case that the appeal proposals relate to a form of development which is detrimental to the design, character, appearance and setting of the building: this is acknowledged in the Committee Report;

(d) The works proposed as part of the current appeal does not involve extensions that will significantly alter the form and general design of the building in a way which would detract from its existing character and appearance – the building works to be undertaken as part of the rebuilding will utilise and re-use the existing original bricks contained within the structure (as far as practically possible) and result in a building not significantly altered from its original form and design;

(e) There is no amenity impact arising from the proposed development;

(f) There is no highway objection to the proposals;

(g) The appeal proposals will not adversely affect any protected wildlife habitat;

(h) The appeal proposals do not conflict with the Local Planning Authority's standards for layout and design in highway criteria – it is acknowledged that the appeal proposals have a lesser impact on the countryside in highway terms that the previous permission; and

(i) No significant area of external storage, giving rise to any visual impact, is proposed as part of the appeal proposals.

3.18 It is therefore the case that the appeal proposals give rise to no conflict with Policy BE20. However, even if it were concluded that the appeal proposals did not accord with one or more of the criteria contained in the policy, this would not mean that planning permission had to be

refused: the policy is permissive and the failure to satisfy one (or more) of its criteria has to be considered in the overall planning balance and the proposals considered against – firstly, the other criteria of policy BE20; secondly, other relevant policies of the development plan; and, thirdly, all other relevant material considerations.

Local Plan Policy RES 10 – Replacement Dwellings

3.19 Policy RES 10 is concerned with replacement dwellings in the countryside. However, I consider it is a pertinent policy and informs consideration of the current appeals as it is a policy concerned with protecting the character and appearance of the countryside. In my view this is the case as, firstly, it relates to the replacement of a form of building in the countryside, which given the partial rebuild of Barn C as part of its conversion to residential use, is therefore of some relevance and, secondly, the process of converting Barns B and C from agricultural use has commenced and is nearing completion and the appeal premises are now effectively in residential use, as such Policy RES 10 bears upon the appeals to this extent.

3.20 Policy RES 10 is a permissive policy which allows for the replacement of dwellings in the countryside providing certain criteria are satisfied. The supporting text of the policy makes clear that the objectives of the policy are to protect rural amenity and prevent unwarranted new residential development in the countryside. The supporting text states:

> **"Many dwellings in the countryside form an intrinsic part of the rural area and have been established for many years. An unjustified proposal to simply demolish an existing building in order to erect a more substantial property constitutes new residential development in the open countryside, resulting in the loss of rural and visual amenity and the potential for the proliferation of new dwellings across the countryside."**

3.21 It is clear, that measured against considerations set out in the above text, the appeal proposals:

1. do not comprise an "unjustified proposal to simply demolish an existing structure"
2. do not relate to a proposal to erect a more substantial property;
3. given the previous grant of planning permission, will clearly not result in the loss of visual and rural amenity; and
4. will not result in the proliferation of new dwellings in the countryside.

3.22 The policy itself is a criteria based policy which provides for the grant of planning permission for replacement dwellings subject to the proposed dwelling being of a similar size and scale to the original, and being built on a similar footprint or in a less detrimental location within the curtilage of the original dwelling having regard to the character and appearance of the countryside.

3.23 It is clear that the appeal proposals give rise to no conflict with Policy RES 10 as the rebuilding of Barn C is of the same size and scale as the original building and will be rebuilt on the same footprint.

(iii) Other Material Considerations

i. PPS1: Delivering Sustainable Development

3.24 The Government's objectives for the planning system are set out in the first part of PPS1 and advise Local Authorities that they should ensure that:

> **"Planning applications are dealt with expeditiously, whilst addressing the relevant issues."**
>
> (PPS1, para 9)

3.25 The guidance also notes that planning decisions should be based on, inter alia:

> **"The potential impacts, positive as well as negative, on the environment of development proposals"**
>
> (PPS1, para 19)

3.26 The accompanying guidance to PPS1 – The Planning System: General Principles provides clear guidance on the determination of planning applications and the role of the Development Plan and other material considerations in the determination of planning applications, stating:

> **"Local Planning Authorities must determine planning applications in accordance with the statutory Development Plan, unless material considerations indicate otherwise. If the Development Plan contains material policies or proposals and there are no material considerations, the application should be determined in accordance with Development Plan. Where there are other material considerations the Development Plan should be the starting point, and other material considerations should be taken into account in reaching a decision. One such consideration will be whether the plan policies are relevant and up-to-date."**
>
> (The Planning System: General Principles, para 10)

3.27 With regard to material considerations, the guidance notes that Government statements of planning policy are material considerations but also provides particular advice where policy may pull in opposite directions, noting, that in such situations:

> **"The planning application (or planning appeal) should be determined on its merits in the light of all the material considerations."**
>
> (The Planning System: General Principles, para 15)

ii. PPS3: Housing

3.28 National planning policy guidance on housing as set out in PPS3 has, as a key component, the effective use of previously developed land and buildings to maximise housing supply without the need for greenfield development. With regard to the effective use of land, the guidance notes that a key objective is that local planning authorities should continue to make effective use of land by re-using land that has been previously developed and that this includes land and buildings which are vacant or derelict as well as land that is currently in use but which has potential for redevelopment (PPS3, paras 40 – 41).

3.29 It is the case that the appeal site and appeal proposals constitute the re-use of previously developed land and buildings to provide additional housing development.

3.30 PPS3 also requires that new housing should encompass good design (PPS3, paras 12 – 19). No objection to the design of the appeal proposals is contended by the Council.

3.31 It is therefore the case that the appeal proposals accord with the relevant national planning policy guidance set out in PPS3.

iii. Draft PPS4: Planning for Prosperous Economies

3.32 Policy EC14 of draft PPS4 relates to the re-use or replacement of buildings in the countryside. This provides support for such development for, inter alia, economic and residential development, having regard to considerations such as impact on the countryside, local economic and social needs, settlement patterns and accessibility and design and related considerations. Importantly, the policy recognises sustainability considerations and how these can impact on issues of retention and conversion of buildings, as against replacement. In considering planning applications the policy requires local planning authorities to consider:

"the suitability of different types of buildings, and of different scales, for re-use recognising that replacement of buildings should be favoured where this would result in a more acceptable and sustainable development than might be achieved through conversion."

(Draft PPS4, Policy EC14(6))

3.33 In my view, the replacement and re-build of that part of Barn C now lost wholly accords with Policy EC14(6) of draft PPS4.

iv. PPS7 : Sustainable Development in Rural Areas

3.34 PPS7 sets out the Government's objectives with regard to development in rural areas. The latter seeks to protect the open countryside from development in order to protect the countryside for its own sake and its intrinsic character whilst recognising that the re-use of previously developed land and buildings is acceptable (PPS7, para 1).

3.35 With regard to housing the guidance recognises that better use should be made of previously developed land in bringing forward residential development (PPS7, para 8) and makes clear the Government's policy is to support the re-use of appropriate located and suitably constructed existing buildings in the countryside where this is consistent with sustainable development objectives (PPS7, para 17).

3.36 The appeal proposals seek to provide housing on previously developed land through the re-use of existing buildings. It is therefore considered that the appeal proposals are consistent with the guidance set out in PPS7.

v. Supplementary Planning Guidance: Guide to Conversion of Rural Buildings (Adopted June 2004)

3.37 The SPG provides guidance on the conversion of rural buildings.

3.38 Of relevance to the appeal proposals is the guidance in relation to partial rebuilding as part of a conversion scheme. In this regard, the guidance notes (Page 6, para 2.5) that where the part rebuilding of brickwork or masonry is proposed as part of a conversion scheme the existing material should be re-used. The commentary on re-building within the guidance is a clear acknowledgement that the conversion of existing buildings will invariably require an element of rebuilding. The re-use of original materials is proposed as part of the appeal proposals where the partial rebuilding required for Barn C will utilise the existing original bricks. The rebuilding of the south gable wall – which had previously been rebuilt prior to 2005 in a non-local/traditional brick – will be rebuilt with bricks to match the original local brickwork, which will result in an improved quality of development compared to that previously permitted.

3.39 With regard to demolition and rebuilding, the guidance note states that under-pinning will be acceptable, subject to a satisfactory structural report. Where the demolition and rebuilding of walls would be required to secure the structural integrity of the building the guidance notes that planning permission for conversion "may not be forthcoming as the result will, in effect, be a new building in the open countryside which would in itself be contrary to Council policy" (page 7, para 2.12).

3.40 On the basis of the guidance referred to above, it is evidently the case that partial rebuilding of brick walls is acceptable in principle (para 2.5 of the guidance). More extensive rebuilding – where this is equivalent to the erection of a new building in the open countryside – may not result in the grant of planning permission – though the wording of the guidance makes clear that in such circumstances a refusal of planning permission would not automatically be the case.

3.41 On the basis of the above it is therefore clear that the Council acknowledge that conversion works to existing buildings will invariably involve an element of re-building. The Council also acknowledge, in the terms set out in para 2.5 of the guidance, that even extensive rebuilding will not preclude the grant of planning permission. In my view the approach towards rebuilding set out in the guidance is correct: the Council cannot state that extensive rebuilding, even where this would be equivalent to the erection of a new building in the countryside, would not be granted planning permission as such an approach would preclude the authority considering each application on its merits.

vi. Local Development Framework: Core Strategy

i) Core Strategy

3.42 As noted above, the Council are at a relatively advanced stage of the preparation of its Core Strategy which, at the time of writing this Proof of Evidence, is at the Examination stage. No reliance is placed by the Council on the emerging Core Strategy in refusing planning permission for the appeal. In my view, the strategic policies set out in the Core Strategy are not material to the determination of the current appeals.

(iv) Planning Policy Conclusions

3.43 On the basis of the analysis set out above, I consider that the appeal proposals do not conflict with the policies of the Development Plan.

3.44 I also consider that the appeal proposals are consistent with the relevant guidance set out in PPS1, PPS3, draft PPS4 and PPS7 together with relevant SPG produced by the Council.

3.45 On the basis of the above, it is considered that the appeal proposals are

consistent with the policy framework established by extant and emerging Development Plan Policies and that there are no material considerations which indicate that planning permission should not be granted in the absence of any conflict with the policies of the Development Plan.

4. CONSIDERATION OF THE COUNCIL'S REASONS FOR REFUSAL

(i) Key Issues Raised by the Appeals

4.1 In my view, the key issue raised by these appeals is the effect of the appeal proposals on the character and appearance of the countryside, the preservation and protection of which is the key objective of development plan policy which, in turn, reflects national planning policy guidance. In this section of my evidence I consider in detail the Council's reasons for refusal and relate this assessment to the key policy objectives relevant to the appeals.

4.2 As noted in Section 1, the reasons for refusal advanced by the Council in respect of both appeals are identical.

4.3 In this part of my evidence I consider the constituent elements of the Council's reasons for refusal as follows:

i) First reason for refusal:

- The proposed development represents a substantial amount of rebuilding to Barn 2 that will be tantamount to the building of a new dwelling in the countryside; and
- As such, the proposed development is contrary to Government guidance in PPS7, RSS8, Policies BE1, BE20 and NE5 of the Adopted Hinckley & Bosworth Local Plan and the Borough Council's SPG on the conversion of rural buildings.

ii) Second reason for refusal:
The grant of planning permission for the appeal proposals would set a precedent for the consideration of further applications of a similar nature, to which the LPA would also object but which would consequently be difficult to resist: the appeal proposals are therefore contrary to the aims of policy BE1 of the Adopted Hinckley & Bosworth Local Plan.

4.4 I consider these issues in detail below.

(ii) First Reason For Refusal: The proposed development represents a substantial amount of rebuilding to Barn 2 that would be tantamount to the building of a new dwelling in the countryside.

4.5 In order to set this aspect of the Council's reason for refusal in context, I first set out, in quantitative terms, the scale and extent of rebuilding necessitated as a result of the demolition which has occurred

Building Footprint

4.6 In its original form, ie prior to the demolition occurring, Barn C had a gross external footprint of 142.6 sq ms. The area of barn demolished, together with the remaining area currently occupied by the surviving remnants of the flank walls, ie the overall area that would require to be rebuilt under the terms of the appeal proposals, amounts to 44.6 sq ms.

4.7 It is therefore the case that the amount of rebuilding of Barn C required, having regard to the building's footprint measured by reference to gross external area is 31.3%.

Wall Area

4.8 With regard to the area of wall that is lost and is to be rebuilt, the existing six flank walls of the barn in its original condition had a total area of 244.5 sq ms. This is shown on Drawing No. 5960 D-100, reproduced at Appendix 4. This calculation of area includes windows and door openings but in its measurement of areas that have been lost and which are to be rebuilt it excludes the stone walls which remain on site. The measurement is therefore considered to represent a fair and balanced assessment of the areas in question. The amount of rebuilding required as a result of the demolition – ie, the reinstatement of the south-eastern flank walls would amount to 91.7 sq ms equating to 37.5% of the wall area of Barn C.

Floorspace

4.9 The loss of parts of the walls of Barn C have no effect on its floorspace as:

(i) The extent of the ground floor floorspace of Barn C has not been affected by the partial demolition of the walls: the floorspace still exists – in the south western range the floorspace has now been converted into residential use; in the south eastern range the northern area of floorspace is enclosed within the remaining walls of the "high barn" element of the building – in the southern part of the south eastern range the floorspace is enclosed by the remaining lower element of the Barn's walls;

(ii) No first floor floorspace exists within Barn C; the original first floor was removed many years ago and prior to the original grant of permission in 2005. All floorspace at first floor level within Barn C would therefore be new floorspace, the extent of which is not affected by the partial loss of the flank walls; and

(iii) It is therefore the case that the only new floorspace within Barn C will be that created at first floor level. This extends to

some 56 sq ms gross internal area and is the same as that previously permitted in 2005 the extent of which is unaffected by the partial loss of the walls.

4.10 It is therefore the case that the extent of rebuild, whether measured in terms of gross external footprint or by reference to the area of brickwork to be replaced, amounts to between 31.3% and 37.5%, ie approximately one third of the structure. It is therefore the case that only a minority of Barn C needs to be replaced.

4.11 The Council consider this scale of rebuilding is tantamount to the building of a new dwelling the countryside.

4.12 In my view, this contention is of little substance as:

- The development proposed involves the replacement of a third of the walls of the original building. However, it is the case that the original building continues to exist on the site albeit with walls of a reduced extent. As such, it cannot be the case that the appeal proposals are tantamount to the building of a "new dwelling in the countryside": such a contention must relate to the erection of a wholly new building within the countryside – neither of which is the case in the current instance;

- The existing footprint of the original building continues to exist – part in its existing form now renovated and converted to residential use and part in the form of the remaining element of the south-eastern part of the building: looking at the footprint of the building it is therefore the case that the use of that part of the appeal site on which Barn C is located is in residential use – the use of the land on which the Barn C sits is therefore not "countryside";

- Barn C is in class C3 residential use; whilst part of the footprint has suffered damage and is currently an incomplete structure the remainder of the footprint is in Class C3 use – the building as a whole is in Class C3 use, it is therefore wholly irrational to contend that the use of the site is "countryside"; and

- on the basis of the above, it is irrational and indeed perverse to contend that the rebuilding of the damaged part of Barn C to allow for the reinstatement of the demolished flank walls is tantamount to the building of a new dwelling in the countryside.

(iii) Second Reason for Refusal: The Grant of Planning Permission for the Appeal Proposals would set a Precedent and would therefore

be contrary to Policy BE1 of the Adopted Hinckley & Bosworth Local Plan

4.13 Each and every application falls to be considered on its merits and the grant of planning permission for this development, given its own particular and unique set of circumstances, would not set a precedent which would bind the Local Authority in the discharge of its development control functions in the future.

4.14 Whilst the Local Planning Authority have refused planning permission for the appeal proposals they have previously granted planning permission in respect of planning applications to rebuild development in comparable circumstances to the appeal proposals. They can only have made these decisions having regard to the particular merits of each application.

4.15 For example, on the appeal site itself, the Council granted planning permission in June 2008 for the erection of a new dwelling house, in place of the former farmhouse occupying the site, permission for which had previously been granted for extensions and alterations to that dwelling (Application Ref: 08/00414/FUL).

4.16 In that instance, planning permission was initially granted in May 2007 for extensions and alterations to the original farmhouse which involved the retention of significant areas of original walls. At the time the planning permission was granted, as with the appeal proposals, the original farmhouse walls to be retained were considered structurally sound, as confirmed by the Structural Report submitted with the application.

4.17 However, in that particular instance, as the planning permission was implemented and building works were underway, it became apparent that the walls of the original farmhouse that were intended to be retained, became unstable and it became apparent that their condition was far worse than revealed by the initial report on structural condition.

4.18 The Council therefore considered an application for the demolition of those walls and the rebuilding anew of the farmhouse, in accordance with the previously permitted scheme. In the light of all material circumstances, the Council granted planning permission

4.19 A copy of that planning application, together with the Council's Committee Report and the Decision Notice is reproduced at Appendix 5.

4.20 The Committee Report sets out in some detail the background to the application leading to the Officers concluding that:

> **"Given the above report** (*the report on the structural condition of the remaining walls and the implications their*

condition had in respect of building etc) **and the view from Building Control Officers, a recent appeal decision on a similar proposal and Members consideration of the application at Hollywell Farm, Ratby, this is considered to be special justification for demolition and rebuilding in the open countryside under Policy RES10.**

The Inspector's conclusion on the application at Meadowview, Lychgate Lane, Burbage, found that while retention of part of the structure was possible, rebuilding was considered acceptable as it was more cost effective and environmentally beneficial as a new dwelling, would have better energy efficiency and lower CO_2 emissions. That application again proposed rebuilding to a previously approved extended property rather than a direct replacement. The Inspector found this to be acceptable and no more detrimental to the countryside than that already permitted.

Policy RES10 sets out that when special justification is accepted, a replacement dwelling will only be permitted where it is a similar size and scale to the original dwelling and built on a similar footprint. In this instance, the applicant proposes to build a dwelling with a similar appearance and footprint as that approved. The only further difference between the previously approved scheme and this proposal in this respect is the conversion of part of an adjacent outbuilding for use as a domestic garage. As this building is existing and forms part of the farm complex its use for garaging is considered to be acceptable.

The proposal is therefore considered to have no greater impact on the openness and appearance of the countryside than the previous permission and therefore, due to the circumstances met through carrying out the works, it meets the criteria set out under this policy."

4.21 It is evident from the above, that in making its decision on the application to build a new dwelling the Council had special regard to the circumstances pertaining, and to the particular merits of the application. Whilst reference was had to other decisions made by the Authority and an Inspector, the determining factor in the Council's conclusions were firmly based upon the particular circumstances pertaining in relation to the proposal.

4.22 Having considered all relevant considerations, the Officer went on to conclude that:

"The structural survey concluded that extending the existing property as previously permitted is not possible.

These views have been confirmed by consultation comments from Building Control Officers. As the proposed dwelling is a similar design, size and siting as previously approved, with the exception that there is now the possibility of obtaining a brick rather than render finish, the application meets the criteria set out under Policy RES10. Therefore, in this instance, to demolish and rebuild this property is considered to be acceptable together with the conversion of the outbuilding to garaging."

4.23 The courts have held that mere fear or generalised concern of a precedent effect will not normally be enough to justify the refusal of planning permission. The courts have held that there must be some evidence for reliance on the issue of precedence (Poundstretcher Limited v. Secretary of State for the Environment [19883P.L.R.69). In essence, a general fear of the establishment of a precedent is not in itself sufficient to warrant the refusal of planning permission, there needs to be evidence that the grant of planning permission for development would result in other planning permissions being granted.

4.24 In the current instance, the circumstances pertaining to the present appeal are unique: the planning history of the site and the previous decisions of the Council as the Local Planning Authority all mean that the particular merits of the current appeals cannot be duplicated elsewhere and, as such, a decision in respect of the current appeals will not fetter the Council's discretion to determine any other application on its merits and with regard to the particular circumstances of those applications.

4.25 In the Committee Report relating to application 08/00414/FUL reference is made to a planning application at Hollywell Farm, Ratby (Ref: 07/00868/FUL).

4.26 That application related to a proposal to rebuild a farmhouse at Hollywell Farm, Desford Lane, Ratby, which had collapsed during the course of works associated with the implementation of a planning permission for its refurbishment and extension. A copy of that Committee Report is reproduced at Appendix 6.

4.27 On page 102 of the Report, scale and extent of the rebuilding works required is set out. The Report notes that:

"The former farmhouse had an overall footprint of around 14.5 ms by 9 ms and was a two and a half storey gable end, pitched roof building constructed of stone and brick with slate roof. Of the original dwelling, the attractive stone front elevation with double bay windows still remains along with approximately 3 ms length on one of the side elevations, however, effectively three walls out of the main four walls of the dwelling have either collapsed or been demolished and it is considered that the extent of the

proposed works amounts to a replacement dwelling in the countryside."

4.28 Officers recommended refusal of permission on the grounds of conflict with (now expired) Structure Plan Policy and Policy NE5 of the Hinckley & Bosworth Local Plan. A second reason for refusal recommended by Officers was that the approval of the application would establish a precedent for the consideration of further applications of a similar nature.

4.29 Prior to the determination of the application, the Council were supplied with an Opinion of Gregory Jones of Counsel. This addressed a number of issues raised in the Officer's Report including that of precedent. The relevant section of that Opinion, in so far as it bears upon the current appeal, states:

> **"The Officer's Report also asserts that to grant planning permission in the present case would create a precedent making it difficult for the Council to resist new residential development in the open countryside. However, as a matter of law, it is not open to a Council merely to assert precedent without evidence to support it unless the case is one where the matter speaks for itself – such as a row of identical terrace houses (see Poundstretcher Limited v SSE(1998)3PLR69 at 74F, David Widdicombe Q.C. sitting as a Deputy High Court Judge said that: ".....where precedent is relied on, mere fear or generalised concern is not enough. There must be evidence in one form or another for the reliance on precedent. In some cases the facts may speak for themselves."). In the present case, no evidence is to be found in the Officer's Report to support the claim of precedent. Indeed, the peculiar circumstances of this case are such that the Council can grant planning permission without any fear that others would be able to rely upon it as a precedent. One need only to examine some of the special factors in this case to realise that precedent is not an issue: (1) personal hardship, (2) the accidental demolition that took place, (3) the fact that the proposal entirely replicates the original building on the site in terms of dimension etc (but superior in terms of quality and renovation), (4) restores to the landscape a building of historic importance."**

4.30 A full copy of the Opinion is reproduced at Appendix 7.

4.31 After full consideration of all aspects of the application, no doubt including Counsel's Opinion, Members resolved to reject the Officer's recommendation and planning permission was granted for the rebuilding of the farmhouse at Hollywell Farm.

4.32 In that instance, the Council clearly concluded that the rebuilding of the farmhouse at Hollywell Farm – which, as noted in the Committee

Report, related to the great majority of the farmhouse which had collapsed during the course of building works leaving only one of the four principal external walls standing – did not conflict with local planning policy NE5 – as it related to the replacement of a building in accordance with a previously permitted scheme of development and neither did it give rise to an issue of precedent given the particular circumstances of that particular application.

4.33 I consider the same planning considerations apply to the current appeal proposals. With regard to the current appeal, there are specific circumstances, unique to this appeal, which demonstrate that having regard to all material considerations and in considering the application on its merits the grant of planning permission for the appeal proposals would give rise to no conflict with the policies of the Development Plan and cannot result in a precedent which would act to fetter the Council's discretion in dealing with further planning applications it may receive at some date in the future.

4.34 The Committee Report in respect of application 08/00414/FUL also refers to an appeal decision relating to a site at Meadow View, Lychgate Lane, Burbage. This appeal (Ref: APP/K2420/A/07/2056141) related to a proposal to replace an existing dwelling as a result of severe dry and wet rot, rising damp and extensive woodworm infestation. A copy of the appeal decision is reproduced at Appendix 8. The proposed replacement dwelling would be the same in form, appearance and site coverage to that which would have resulted from the implementation of an extant permission for the extension of the original dwelling (Appeal decision notice para. 3)

4.35 The Council opposed the development on grounds, inter alia, of precedent. However the Inspector concluded there was no basis for such concern, stating:

> **"I am not persuaded that acceptance of the proposed development would set a precedent for the consideration of future applications of a similar nature. Each application must be judged on its merits and what is appropriate in one situation is not necessarily acceptable in another. In this case the replacement dwelling is justified in terms of Policy RES10 of the Local Plan and the acceptability of its extension in relation to the countryside policies of the Structure and Local Plans has been demonstrated by the planning permission granted in 2006."**
>
> (Appeal decision letter, para 5)

4.36 In my view the Inspector was correct in concluding that no issue of precedent arose in respect of that appeal: the Inspector found that each application/appeal was different and had to be determined on its merits, assessing what may or may not be appropriate in each particular situation. In my view, the same conclusions arise in respect of the

current appeals: they fall to be determined on their merits and the decision made concerning the grant or refusal of permission will not set a precedent with regard to the determination of future applications.

(iv) The Reasons for Refusal Assessed Against the Key Issue Raised By The Appeals

4.37 In my view, the key issue raised by this appeal is the effect of the appeal proposals on the character and appearance of the countryside. This is the principal test set out in Policy NE5 of the Local Plan in the context of the current appeals. I have demonstrated in the preceding part of this section of my evidence that there is no justification to the Council's contention that planning permission for the appeal proposals should be refused either because the appeal proposals are tantamount to the erection of a new dwelling in the countryside or that the grant of permission would give rise to a precedent that would fetter the Council's future exercise of its development control function.

4.38 It is apparent from the consideration of the appeal proposals set out in the Committee Report that the Council consider the appeal proposals give rise to no demonstrable harm to any relevant interest of acknowledged importance: there is no objection to the appeal proposals on grounds of design, layout, siting, highways or any other particular aspect of the proposed development. The appeal proposals are not considered to harm the countryside. The harm found by the Council is, in their view, a failure of the appeal proposals to completely comply with their interpretation of the letter, rather than the purpose or objective of countryside policy.

4.39 In my view, this represents an unjustified slavish adherence to policy and is a wholly inappropriate and fundamentally flawed application of planning policy to the appeal proposals.

4.40 It is fundamental to the understanding and application of development plan policy that compliance or not with relevant policy is dependent on the investigation of harm that may result to interest of acknowledged importance. This requires exercise of a judgment which informs and underpins whether harm arises or not to the objective of the relevant policy. If the judgment reached is that there are no significant adverse effects to the identified interests of acknowledged importance no harm in the planning sense, arises to those interests of acknowledged importance. Axiomatically, the policy therefore cannot be undermined, as the policy has answered itself.

4.41 As set out above, I consider that the Council are wrong in concluding that the appeal proposals give rise to any conflict with the development plan. However, even if this were not the case, a simple conflict of policy, in the absence of any harmful consequence or effect, would not be sufficient grounds to justify the refusal of planning permission.

4.42 As PPS1 and its accompanying guidance notes make clear, in determining planning applications Local Planning Authorities are required to deal with planning applications while addressing the "relevant issues" (PPS1, para 9). In determining planning applications and appeals, guidance makes clear that while the policies of the development plan constitute a starting point due regard must be had to all material considerations. The latter includes, in the context of the current appeals, the site's planning history.

4.43 Given that the development the subject of the current appeals comprises an identical form of development to that which the Local Planning Authority have already granted planning permission, coupled with the fact that it is acknowledged that the appeal proposals give rise to no harm to the objectives of policy with regard to effect on the countryside, design, siting, layout, highways or in any other respect, I consider that the Council's justification for the refusal of planning permission ie that, in their view, the appeal proposals do not exactly fulfil the criteria set out in policy BE20, to represent a narrow and wholly unjustified and unreasonable approach to the consideration of the appeal proposals.

4.44 The Council's subjective judgment that the appeal proposals ~~now~~ involve a "significant" amount of rebuilding, compared to the lesser element of rebuilding when planning permission was originally granted, constitutes the sole reason for the Council's opposition to the proposed development (the Council's concern with "precedent" is consequential to this principal concern).

4.45 Given the Council's acknowledgement that the appeal proposals produce no harm in respect of the impact of the development on the countryside, the landscape and related considerations and that the resultant building would not be materially different to that which would exist under the terms of the original permission if the flank walls had not been lost, I consider that the Council's subjective assessment of whether or not the scale of rebuilding involved is more or less significant, becomes irrelevant.

4.46 The same conclusion was reached by the appeal Inspector in respect of the proposed replacement dwelling at Meadow View, referred to previously (see para 4.32 et.seq. above). In that instance the Inspector conclude that as the appeal proposal was not materially different to the development that had previously been permitted by the Council and that the development was acceptable in relation to the countryside policies of the development plan this provided no justification for a refusal of planning permission. He concluded in this regard:

> **"Similarly, the proposed development would have no greater effect on the general appearance and character of the landscape and countryside than has already been permitted. Consequently it would be in accord with Strategy Policy 8 of the Leicestershire, Leicester and**

Rutland Structure Plan and Policy NE5 of the Hinckley and Bosworth Local Plan and cause no harm to the qualities and interests which those policies seek to protect."

(Appeal decision letter, para 4)

4.47 The issues raised by the Local Planning Authority in the current appeals are similar to the issues raised in an appeal considered in respect of a barn conversion at Coddington Farm, Whatstandwell, Matlock in Derbyshire, where, following an appeal against an Enforcement Notice, the matter was subsequently the subject of a decision by the High Court in January 2009. Relevant papers relating to this decision are reproduced at Appendix 9.

4.48 In that instance, planning permission was granted in 2006 for the conversion of a barn at Coddington Farm to a dwelling. The Local Planning Authority became aware that the scale of demolition and rebuilding being undertaken in the course of implementing the planning permission (AVA/2006/086) was greater than that originally proposed. It was agreed by the parties at the appeal that approximately 16% of the external wall area of the barn was envisaged as needing rebuilding in the context of the planning application but in the course of the works undertaken more like 37% - or just over a third - of the wall was rebuilt (appeal decision letter paras 5 and 7).

4.49 In the light of these changes, the Council contended that in effect the barn had been substantially demolished such that the original building no longer existed and that the development undertaken constituted the creation of a new dwelling as the original building no longer existed and could not be rebuilt (appeal decision letter para 13).

4.50 The Inspector concluded that notwithstanding the Council's contention:

"However, a substantial part of the original barn walls remain. The rebuilt sections, including the door and window openings, are essentially as indicated in the approved drawings and the building has the same footprint. Nor has it been extended. That being so, I consider that if the building is completed, insofar as is now possible in accordance with the approved scheme, the effect on the character and appearance of the area, including the special landscape area, would be little different from that of the approved scheme for the original barn. That effect would also be lessened by the weathering of the new works. The alternative in accordance with the notice requirements, would be retention of the remaining original walls of the barn as a ruin."

(Appeal decision letter, para 15)

4.51 Other changes made by the Appellants in respect of excavation works

were not considered significant by the Inspector (appeal decision letter, para 16).

4.52 The Inspector allowed the appeal under ground (a) and granted planning permission.

4.53 The Council were aggrieved the Inspector's Report and challenged the decision under Section 188 of the 1990 Act.

4.54 The High Court considered the Council's application on 16th January 2009 and handed down its decision on the 23rd January 2009.

4.55 The High Court found in favour of the Secretary of State and rejected the Council's challenge.

4.56 With regard to the Council's contention that the Appellants had built or sought to build a new house, the Court noted that this is not what the Inspector found following his examination of the evidence and a site inspection. The Court held that the Inspector's findings were:

> **"He found that a substantial part of the original barn walls remained and that the rebuilt sections, including the door and window openings, were essentially as indicated in the approved drawings. The building had the same footprint as before and had not been extended. These were factual conclusions based on his planning judgment and his inspection of the site and cannot be impugned in this Court."**
>
> (Court Judgment, para 21)

4.57 In paragraphs 25 – 31 the Court considers the Inspector's assessment of the appeal proposals in the context of the Local Development Plan. The Court notes that the Inspector concluded that the main issue raised by the appeal proposals were the "effect of the proposal on the character and appearance of the countryside and the special landscape area".

4.58 The Court found that the question of whether the barn could be converted into residential purposes had been determined in the Appellant's favour in 2006 at the time of the original grant of planning permission. Given that the subsequent events did not involve any increase in the size of the building the material consideration was whether changes to the appearance of the building as rebuilt, compared to the appearance of the building shown on the plans for which permission had been granted would or would not have an adverse effect on the character and appearance of the countryside in the special landscape area. This was the material consideration the Inspector had correctly addressed and he had concluded that no such harm would result.

4.59 The Court held that this was the determining factor in the case. The Court concluded (my emphasis):

> **"Mr Hogan (*for the Claimant)* argues that the Inspector failed to identify material considerations justifying a departure from the Development Plan. However, the Inspector concluded that the proposal would not harm the character and appearance of the countryside or special landscape area. It therefore complied in his view with the plan, and it was not necessary for him to identify material considerations justifying a departure from it."**
>
> (Court ruling, para 31)

4.60 The Court found that the Inspector had considered all relevant material considerations and had concluded that in the absence of harm to the appearance of the countryside and given the grant of planning permission for development not materially different to that which had been built, there was no conflict with the development plan. In my view, the approach of the Inspector, as supported by the High Court, is directly comparable to the current appeals and demonstrates that if the appeal proposals give rise to no harm to the policy objectives of the development plan – as acknowledged by the Council, and would result in a form of development not materially different to that previously approved – again as acknowledged by the Council, there can be no justification in the refusal of planning permission.

4.61 Similar considerations arose in respect of an appeal against an enforcement notice issues in respect of The Haybarn at Mount Farm in Hopton, Staffordshire, (APP/Y3425/C/06/2005797 & 2005806 & 2012607 & 2012612). A copy of the Appeal decision is reproduced at Appendix 10.

4.62 In that case planning permission had been granted for the residential conversion of a complex of 4 former agricultural buildings, adjacent to a farmhouse to residential use (Appeal decision para. 4)

4.63 When conversion works commenced it was apparent that, unlike the other buildings in the complex permitted to be converted, The Haybarn had no proper foundations but merely shallow courses of brickwork laid directly onto the earth (and when attempts to underpin started the building substantially collapsed Appeal decision para 20).

4.64 Following the substantial collapse of the building a replacement building was erected in its place. Despite some differences the replacement building was similar in size, shape and bulk to the former Haybarn which had the benefit of a planning permission granted in 2002 for conversion to a dwelling (Appeal decision para 16).

4.65 The Council refused retrospective planning permission for the

development and enforced against the development. The Inspector quashed the enforcement notice and allowed the appeal. In considering the proposals the Inspector determined that the key issues was the effect of the proposal on the character and appearance of the countryside (Appeal decision para. 7).

4.66 The Council contended that the appeal proposals conflicted with the policies of the development plan as it constituted new residential development in the countryside; it was also incongruous by virtue of the materials used in its construction, it was starkly visible and the roof slope was incorrect (Appeal decision para. 11)

4.67 The Inspector found that notwithstanding the use of reclaimed materials the appeal proposal was effectively a new structure rather than a conversion (Appeal decision para 14) and that as the original building had been demolished the permission for the conversion of the original structure into a dwelling was no longer capable of implementation (Appeal decision para.15)

4.68 The Inspector found that notwithstanding the development comprised a new building it had no adverse effect on the key issue of impact on the countryside. He found with respect to the appeal building (my emphasis):

> **"It is similar in shape, size, siting and bulk to the former Haybarn. On that basis its impact in the countryside is little different from a building that has stood on the site for many years. That former building also had the benefit of planning permission granted in June 2002, for conversion to a dwelling. Moreover, and significantly in my view, as part of a conversion of the former group of farm buildings to 5 dwellings (including the original farmhouse to to which the Haybarn was physically attached). Those other 4 dwellings have been formed and, together with a new garage block, effectively surround the appeal building. In terms of impact in the countryside the current situation is little different from what existed before (although apparently dilapidated) or what would have resulted from the full implementation of the 2002 planning permission."**
>
> **(Appeal decision para.16)**

4.69 The Inspector dismissed the Council's concerns with regard to design issues (Appeal decision para. 17). He also concluded that demolishing the appeal building would not return the use of the land to open countryside but would form a more open courtyard between buildings where domestic activities, including vehicle parking could occur (Appeal decision para. 18). If demolished the inclusion of the land within the curtilage of an adjacent building would result in domestication of the character of the land (Appeal decision para. 19).

4.70 The Inspector again found that the appeal proposals were not materially different to the development previously permitted finding that:

> **"I accept that the Appellants proceeded with work on the Haybarn, going beyond, in my view, making good of parts of the building required by a condition of the original permission. Nor do I condone failure to draw the collapse to the Council's attention at the outset. But, the Appellants did proceed to continue to seek a solution with the Council. What is more, accepting the new appearance of the building and some modifications to door, window and lean-to roof details the location, scale, bulk and design of the building, and its relationship to the Mount Farm building group is not significantly different from the scheme permitted in 2002. Nor is this case significantly different from the circumstances at Moreton Cottage and Horsely Hall Farm where dwellings were allowed to be substantially rebuilt following unforeseen collapse of former buildings."**
>
> (Appeal decision para. 21)

4.71 In overall terms and with regard to the key issue he had identified, the Inspector concluded the proposal would not harm the character and appearance of the countryside and allowed the appeal (Appeal decision para. 27).

4.72 In my view the approach adopted by the Inspector in the above appeal was correct: he identified the key issues as being the effect of the appeal proposals on the countryside and concluded that having regard to all material considerations that the appeal proposals would result in no different effect on the countryside than the development that had previously been permitted. In essence, the Inspector was of the view that as the new building was the same in terms of location, scale, bulk and design as the previously permitted scheme, its impact on the countryside could not be materially different and therefore, with regard to the objectives of planning policy, whether the development was a conversion of an older property or new build was immaterial.

4.73 In overall terms I consider that in granting planning permission in June 2008 for a new farmhouse at Common Farm, as a replacement for the existing structure, the Council were correct in reasoning that as the development would have no greater impact on the openness and appearance of the countryside no harm was caused by the development (see para.4.19 above). For the same reasons, I consider that the Council were correct in granting planning permission for the rebuilding of Hollywell Farmhouse, as it related to a replacement building in accordance with a previously permitted scheme (see para. 4.25 above). These decisions reflect a consistency in decision making on the part of

the Council in assessing the impact or effect of development proposals on the key objectives or preserving the character and appearance of the countryside and landscape underlying Policy NE5. On the same basis, however, I consider that the Council's decision to refuse permission for the appeal proposals is fundamentally flawed and an incorrect application of policy.

4.74 In my view this conclusion is borne out by the appeal decisions in respect of the replacement dwellings at Meadow View (para. 4.46 above) and Mount Farm (para. 4.68 above) and the appeal and High Court decisions concerning the barn conversion at Coddington Farm (para. 4.59 above): in all those cases the decision maker assessed the development against the objectives of development plan policy, rather than the specific letter of the policy's text and where the objectives of policy were found not to be harmed allowed the development to proceed.

4.75 It is the case in the current appeals that the Council acknowledge that the rebuilding of the element of Barn C now partially demolished will have no greater impact on the character and appearance of the landscape or countryside than the previously permitted scheme – indeed, the appeal proposals are acknowledged as having a lesser impact than the permitted scheme as a result of the revised access arrangements (see para 2.31 above). In the light of the analysis set out above and the Council's acceptance of the absence of harm, I consider there are no grounds on which planning permission for the appeal proposals can reasonably be refused.

5. CONCLUSIONS

5.1 I consider that the key issue in this appeal is the effect of the appeal proposals on the character and appearance of the countryside.

5.2 Against this key consideration the appeal proposals are acknowledged by the Council to have no greater effect on the character and appearance of the landscape and countryside than the previously permitted scheme for the appeal site: indeed, the revised access arrangements are accepted by the Council to result in an overall lesser impact on the countryside than the previously approved scheme.

5.3 That previously approved scheme was considered by the Council to accord with the policies of the development plan and not to conflict with the objectives of those policies. As such, the appeal proposals must similarly accord with the policies and policy objectives of the development plan.

5.4 As I have shown in preceding sections of my evidence, in determining other applications for the rebuilding of buildings in the countryside which had unexpectedly collapsed or had needed to be demolished as a result of structural considerations, including the farmhouse forming part of the Manor Farm building complex, the Council have considered such proposals against the objectives of countryside policy and have concluded that where rebuilding gives rise to no materially greater impact planning permission should be granted. In my view, this should have been the Council's approach towards the assessment of the appeal proposals which would then have resulted in planning permission being granted.

5.5 In my evidence I have demonstrated that the assessment of appeal proposals against the policy objectives of the development plan, rather than complete and precise adherence to the letter and text of policy is the correct approach to apply in the evaluation of development proposals. The Council's approach in the case of the current appeals is fundamentally flawed and constitutes a slavish and unjustified application of policy which has ignored relevant material considerations and which has resulted in a refusal of planning permission which is unreasonable and which cannot be sustained.

5.6 I therefore respectfully request that the appeal be allowed and that planning permission be granted.

2.7.11

HINCKLEY AND BOSWORTH BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

APPEALS UNDER SECTION 78

Hinckley & Bosworth Borough Council

APPEALS BY MR G WRAGG AT COMMON FARM, BARTON ROAD, CARLTON, LEICESTERSHIRE

HBBC REFERENCES 08/00978/FUL and 09/00029/FUL

THE PLANNING INSPECTORATE REFERENCES APP/K2420/A/09/2099681/NWF and APP/K2420/A/09/2101955/NWF

SUMMARY PREPARED BY LOUISE FORMAN

1.1 Common Farm is situated in the countryside to the north east of Barton Road, between the villages of Market Bosworth and Carlton. The area consists of agricultural fields with isolated farms and dwellings. The site itself comprises a dwelling (approved in 2008) and a substantial group of outbuildings to a former farm complex. The barns, the subject of these appeals, are located to the north of the dwelling, they are generally single storey but one, the high barn was roughly 1.8 metres higher than the rest of the group. Some other barns within the complex have been renovated and granted planning permission for change of use for industrial purposes.

1.2 The site was originally a working farm holding; the existing use of the site is described as 'agricultural' in the 2005 application, but there was a motor repair workshop in one of the other barns which had been granted planning permission in 1991 also operating from the site.

1.3 On 28 February 2005, an application (05/00197/FUL) was submitted for the conversion of a group of five barns to two residential units, and one commercial industrial unit was subsequently approved. The report refers to 'the principle of residential conversion of the barns for residential use was justified on the basis that joint uses (residential and employment uses) were proposed for the site'.

1.4 The application was considered to fulfil these criteria of policy BE20 and was approved on that basis that the design was considered to be acceptable as the approved scheme respected the character and architectural features of these rural buildings and by the structural survey which stated that the barns were generally in a sound structural condition and there was a limited amount of rebuilding required in order for the conversion to take place.

1.5 The current applications, the subject of these appeals, seek full planning permission for the conversion of four barns into two residential dwellings. The applications seek more extensive demolition than the scheme approved in 2005.

1.6 Both applications were refused for the following reasons;

1 The proposed development represents a substantial amount of re-building to Barn 2 that would be tantamount to the building of a new dwelling in the countryside. The proposed development is therefore contrary to government guidance in Planning Policy Statement 7 (Sustainable Development in Rural Areas), the Regional Spatial Strategy for the East Midlands (RSS8), Policies BE1, BE20 and NE5 of the adopted Hinckley and Bosworth Local Plan and the Borough Council's adopted Supplementary Planning Guidance on the Conversion of Rural Buildings.

2 The approval of this proposal would set a precedent for the consideration of further applications of a similar nature, to which the Local Planning Authority would also object but which would consequently be difficult to resist, it would therefore be contrary to the aims of policy BE1 of the adopted Hinckley and Bosworth Local Plan.

1.7 Policy BE1 seeks to ensure a high standard of design in order to secure attractive development and to safeguard and enhance the existing environment. Development should complement or enhance the character of the surrounding area with regard to scale, layout, design, materials and architectural features; incorporate landscaping to a high standard; ensure adequate highway visibility for road users and adequate provision for parking together with turning facilities and should not adversely affect the occupiers of neighbouring properties.

1.8 Policy BE20 states that in the countryside planning permission will be granted for the re-use and adaptation of rural buildings unless:

- the proposed use has an adverse effect on the appearance or character of the landscape;
- the building is in a structurally unsound condition and is thus incapable of conversion without significant adaptation and rebuilding;
- the proposals are detrimental to the design, character, appearance and setting of the building;

- the conversion involves extensions that would significantly alter the form and general design of the building in a way which would detract from its existing character and appearance;
- the proposal would adversely affect highway safety or any protected wildlife habitat.

1.9 Policy NE5 states that the countryside will be protected for its own sake. However, planning permission will be granted provided that the development is important to the local economy and cannot be provided within or adjacent to an existing settlement and where the proposal does not have an adverse effect on the character and appearance of the landscape; is in keeping with the scale and character of existing buildings and the general surroundings, is effectively screened by landscaping and will not generate traffic likely to exceed the capacity of the highway network or impair road safety and is effectively screened by landscaping.

2.0 The Council's Supplementary Planning Guidance (SPG) on the Conversion of Rural Buildings states that the re-use and adaptation of existing rural buildings has an important role to play in meeting the needs of rural areas for commercial and industrial purposes: reducing the need for new buildings; avoiding vacant buildings becoming prone to vandalism and dereliction; and providing employment. It states that residential re-use may not be considered favourably unless the applicant has first considered a commercial type use for the buildings or there are significant overriding material planning considerations that would make business uses undesirable. Where demolition and rebuilding of walls would be required to secure the structural integrity of the building, planning permission will not be forthcoming as the result would be a new building in the countryside which in itself is contrary to policy. Generally, significant extensions to a barn as part of an overall conversion will be unacceptable. Garages should be provided within the initial scheme as the Council will strongly resist the provision of garages after the conversion has taken place. The sustainability of a development proposal will be a key factor in its determination. The guidance gives further detailed advice regarding external and internal building design features, the setting of the buildings, habitat preservation and creation and landscaping.

2.1 Planning Policy Statement 7 Sustainable Development in Rural Areas encourages the re-use of appropriately located and suitably constructed existing buildings within the countryside where this meets sustainable development objectives. In assessing such development, consideration should be given to: the potential impact on the countryside, landscape and wildlife; accessibility to settlements; the suitability of different types of building and of different scales for re-use; the need or desire to preserve buildings of historic interest or that contribute to local character.

2.2 The main issues of this case are:

I. Does the proposed development comply with local and national planning policy?

II. Do material considerations outweigh the consideration of the applications in line with policy?

2.3 Both government guidance and local plan policy support the re-use of redundant agricultural buildings in the countryside and conversion for residential purposes can be acceptable subject to certain criteria being satisfied. Local Plan policy in relation to the conversion of rural buildings seeks to encourage either employment, recreation or tourism uses in the first instance, and, only if it proves that there is no interest in the rural building for these uses, may residential conversion be looked upon favourably.

2.4 The conversion of existing redundant agricultural buildings in the countryside to residential use can be acceptable in principle subject to the applicant demonstrating that the buildings are capable of conversion in structural terms. Both Policy BE20 and adopted Supplementary Planning Guidance state that planning permission will only be granted for the re-use and adaptation of a rural building if it can be converted without significant extensions that alter the form of the building so as to detract from its existing character and appearance.

2.5 The site is located within the countryside as defined in the adopted Hinckley and Bosworth Local Plan to which policy NE5 applies. Policy NE5 states that the countryside will be protected for its own sake. Planning permission will be

granted provided that the development is important to the local economy and cannot be provided within or adjacent to an existing settlement and where the proposal does not have an adverse effect on the character and appearance of the landscape; is in keeping with the scale and character of existing buildings and the general surroundings, is effectively screened by landscaping and will not generate traffic likely to exceed the capacity of the highway network or impair road safety.

2.6 The applications, the subject of these appeals, propose a significant amount of rebuilding, in particular to the high barn. In the grounds of appeal, the appellant contends that the impact of the reinstatement works will cause no harm to or identifiable difference from the conversion approved in 2005 in all respects and by permitting the appeals, will allow the historic layout of the farm site to be retained and will not create a precedent for the future.

2.7 The rebuilding works have been calculated to result in almost two thirds of the floor space of Barn 2 being new build. The appellant has described the re-building works in terms of 35% of the total wall area. Whilst the scheme is similar in design and appearance to the scheme approved in 2005 and is considered to have no greater impact on the openness and appearance of the countryside than the previous permission, it is considered that the scheme could not be supported as it is contrary to the aims of adopted Policies BE20 and NE5 in that Barn 2, and in particular the high barn element, needs considerable rebuilding and as such will result in a building which is tantamount to a new dwelling in the countryside.

2.8 On the full consideration of both applications, it was judged that the applications did not meet policy requirements and therefore could not supported. In the opinion of the Local Planning Authority, the amount of the structure of the high barn that now exists on site is not of a sufficient quantity to constitute a building which can be re-built within the spirit of adopted policies.

2.9 The grounds of appeal refer to 'the principles of fairness and the exercise of discretion' within the planning process. The applications have been dealt with in a fair and democratic manner taking into account the requirements of the relevant planning acts. This proposal has now been considered by Officers and

Members on three occasions and refused on the same grounds that the policy considerations outweigh all other material considerations.

3.0 The evidence submitted on behalf of the Council demonstrates that the proposal is contrary to the fundamental principles contained within adopted policy in that it would result in a significant amount of rebuilding of a building within an area to which countryside policy applies and that no material considerations put forward by the appellant override the policy considerations.

3.1 Whilst each application is considered on its own merits, the Local Planning Authority considers that the approval of the current proposal would set a precedent which could result in future applications of a similar nature being difficult to resist.