2.7.2009
DC APL COR

# MR. GRAHAM WRAGG

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78**

**SITE AT COMMON FARM, BARTON ROAD, CARLTON, NUNEATON**

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## CLOSING SUBMISSIONS
## ON BEHALF OF THE APPELLANT

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**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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1. I indicated in opening that the decision in respect of both appeals taken by the Council, as evidenced by identical refusal notices (in terms of the stated reasons for refusal), was unreasonable. The evidence, particularly exposed in the XX of LF, demonstrated that these decisions were unreasonable – that is to say it was not necessary, having regard to the development plan and in balancing other material planning considerations, for these proposals to be refused planning permission.

2. In this way, contrary to Government Policy, this planning authority has inhibited and delayed development which could reasonably have been permitted having regard to S 38 (6) of the 2004 Act.

3. I set out in opening this appeal that at its very heart was the fundamental application and interpretation of development plan policy.

4. As LF agreed in XX in determining applications in the light of relevant development plan policy the decision maker must consider what the objectives of those relevant policies are and consequently whether the proposed development is contrary to (or harms in the planning sense) those objectives. If it is concluded that the proposed development does not harm the stated objectives then the policy is not breached. Ergo, the proposed development is not contrary to the policy – the policy has answered itself. Policy does not exist in a vacuum. Provided therefore no other material considerations indicate otherwise then planning permission should follow.

5. This longstanding approach to development plan policy has as XX has revealed been completely ignored by this planning authority in considering the appeal proposals.

6. This policy context and what submissions follow must be considered against a position where by the Council and the appellant agree in the SOCG that:

6.1.1 There is no objection to the appeal proposals save for that element of the development which relates to the partial rebuilding of the south-eastern range of Barn C;

6.1.2 The development proposed by the appeal applications relate to a form of development identical in all material respects to that previously granted planning permission by the Council under the terms of planning permission 05/00197/FUL of 22nd November 2005;

6.1.3 The appeal proposal will have no greater effect on the openness, character and appearance of the countryside than the development permitted by the Council under the terms of planning permission 05/00197/FUL; indeed, it is agreed that the appeal proposals will have a lesser impact on the character and appearance of the countryside than that previously approved development as a result of the change to the access arrangements proposed by the appeal proposals;

6.1.4 There are no issues with regard to design, siting, external appearance or any other aspect related to the detailed appearance of the appeal proposals that is in dispute between the parties;

6.1.5 That save the partial rebuilding of the south-eastern range of Barn C – which is considered by the Council to give rise to conflict with policies of the Development Plan – there is no other conflict with the Development Plan

7. One could palpably see the penny drop with LF that she as the Case Officer had approached the consideration of Policy in the wrong manner.

8. LF agreed that the correct approach set out above had been adopted in the relevant decisions set out in the evidence of DJP. The importance of those decisions, as DJP confirmed in his XIC, was to demonstrate the correct approach to policy. This also confirmed in terms of the decision making, all of the decisions were either allowed or granted planning permission on the basis of their individual merits, key principles of the planning system namely consistency and fairness. Fairness is fundamental to the operation of the planning process and to the exercise of discretion in the planning process. We say in this case, having regard to the fact that these proposals accord with the relevant policies of the development plan and no other material considerations indicate that permission should not be

forthcoming subject to conditions, it would not be fair or consistent in the circumstances to prevent completion of the conversion of Barn C.

9. After all:

9.1 There is no dispute between the parties that the conversion of Barn C to residential use is acceptable in policy terms – as evidence by the grant of the 2005 permission.

9.2 The Committee Report in respect of the 1st appeal 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."**
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> (Committee Report, pg 79)

9.3 As such LF agreed in XX that the 2005 permission was a material consideration in the determination of this appeal.

9.4 That consent has been lawfully implemented in accordance with S 56 of the TCPA 1990. As such the terms of the permission, having been implemented within the statutory 3 year period and the pre-conditions to that permission also being properly discharged within that period, the consent enures in perpetuity. Whilst the conversion of Barn C cannot be completed without the grant of permission through these appeals, it is beyond peradventure that the lawful use of the Barns to which the 2005 consent relates is C3 (residential use) for Barns B & C and light industrial use for Barn D.

10. Much has been made of structural issues relating to Barn C. However, the following represents the factual position against which this appeal must be considered:

10.1 It is agreed that the deterioration in the physical condition of Barn C, arose post the 2005 consent works commencing. The appellant did not acquire the ownership of Common Farm until 2007, with commencement of development of the 2005 consent commencing in the early spring of 2008.

10.2 In the Planning Officer's Report to Committee in respect of the 1st appeal it was confirmed the structural deterioration of Barn C records:

> **"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."**
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> (Committee Report, pg 76)

10.3 Accordingly the evidence confirms the Council's acknowledgement that the demolition of the High Barn walls to Barn C has arisen as a result of its physical condition following removal of the roof with the resultant movement in the building as set out above, exacerbated through the absence of a 1st floor (which was removed many years ago). This was recorded in the further Structural Survey from Diamond Wood that accompanied the submission to the 1st appeal. This concluded 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.**
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> **Survey Findings**
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> **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)

10.4 As noted above the condition of Barn C was independently corroborated by the Council's Building Control Section following site visits during the early construction phase of the 2005 consent.

11. It is agreed with the Council that the removal of the walls was not at the behest of the appellant to seek some form of advantage through the planning system.

12. The 2005 consent also acknowledged, through the JMP Report, that there would be required to High Barn, some degree of rebuilding albeit that the Council did not consider it necessary, having regard to that report, to impose conditions regulating or controlling the level and detail of demolition that was to take place. In addition that Report acknowledged that the roof of Barn C would need to be replaced together with underpinning of the foundations to High Barn, which were noted to be shallow.

13. The Council could easily have imposed such controls on levels of demolition on that consent but chose not to do so. What transpired is clear – namely that between 2005 and the commencement of works in the early spring of 2008 the structural condition of Barn C deteriorated to the extent that the an element of the walls (37.5% of the total wall area) to Barn C collapsed and/or was demolished by contractors on site.

14. We invite you to the conclusion that the remaining 62.5% of the external wall area to Barn C represents a substantial remaining part of the original barn walls. (Note: same as conclusions reached in the Matlock decision at

DJP Appendices 9). LF agreed in XX that the consideration of the total gross external wall area (compared with the wall area lost to collapse) the approach adopted by the appellants was "the right approach".

15. The balance of Barn C remaining is structurally intact and has been converted in accordance with the approved details to the 2005 consent.

16. Axiomatically, what is sought by the appeal proposals represents the same scale, location, massing and footprint of the 2005 approved conversion of Barn C. No extension is proposed. Put simply, the proposed walls of Barn C to be re-built will be the same as on the 2005 approved drawings and the building will have the same footprint and floor area (a fact also conceded by LF in XX).

17. Set against the 1st main issue you identified, we invite you to conclude on the evidence before this Inquiry that the proposed re-building of Barn C taken cannot be considered by any rational and reasonable measure, and particularly given that 2/3rds of the existing original external walls to Barn C remain, to be "tantamount to a new dwelling in the countryside" as alleged by the Council in the 1st RR or at all.

18. The completion of Barn C in accordance with the 2005 approved details will restore we say a barn that is central to the complex of barns at Common Farm, that with the support of this Council has injected investment of more than £3m into this site to enable the restoration of the buildings and provide a mixed-use development that fully accords with the Government's objectives of diversifying the rural economy contrary to the view of LF it will complete the restoration of an important barn within this complex as acknowledged by the Market Bosworth History Society. Key features of the barn will be restored (e.g. ornate barge boards and stone plinth).

19. The Council in the 1st RR for both appeal stated that the proposals were refused on the basis of conflict with

- PPS 7
- RSS 8

- Policies BE 1, BE 20 and NE 5 of the adopted Local Plan (saved policies)
- The Council adopted SPG relating to Conversion of Rural Building

20. Following XX on the above policies which underpinned the Council's case regarding the 1st RR: LF agreed the following:

- The appeal proposals accord with relevant objectives regarding rural development contained in PPS 7. Accordingly the appeal proposals accord with PPS 7 and it could be struck out from the 1st reason for refusal to both appeals;

- RSS 8 is no longer extant and had been superceded (in March 2009) by the EMRG. The appeal proposals did not conflict with any of the relevant objectives and accordingly policies of the EMRG relating to rural development (or otherwise). Given that the EMRG was predicated upon PPS 7 the proposals could not offend that guidance as conceded above. This policy could similarly be struck out from the 1st reason for refusal to both appeals. This was conceded in the SOCG at paragraph 4.5. One does have to wonder why it took XX for the Council to concede these points.

21. Policy NE 5 is a generic countryside protection policy, akin to many similar policies in local plans around the country and reflective of the general policy relating to the protection of the countryside contained in PPS 7. It is asserted in the 1st RR for both appeals that the proposals are contrary to this policy.

22. In my submission, it has been demonstrated through XX (see below) and having regard to the measure of agreement reached with LF in XX, the Council's contention that the appeal proposals give rise to any conflict with this policy is flawed. NE5 is a permissive policy the primary objective of which, in line with Policies BE 20 and RES 10, is to protect the character and appearance of the countryside. It sets out three categories of development that will be granted planning permission

provided the criteria set out in the policy are satisfied. LF agreed in XX that the appeal proposals satisfy all three of the stated criteria.

23. LF also accepted in XX that the policy does NOT state that planning permission will not be granted where proposed development does not fall within the stated categories. LF acknowledged that NE 5 was not prescriptive in terms of the classes of development it described – thus a proposal that satisfied RES 10 would not by definition be in breach of Policy NE5. Such internal inconsistency LF agreed was not the intention of the Local Plan policy. (Note: Legal Opinion of Gregory Jones – DJP Appendices 7 conceals with this).

24. It is agreed as set out in the SOCG that the appeal proposal will have no greater effect on the openness, character and appearance of the countryside than the development permitted by the Council under the terms of planning permission 05/00197/FUL (in fact the appeal proposals will have a lesser impact on the character and appearance of the countryside than that previously approved development as a result of the change to the access arrangements proposed by the appeal proposals) LF conceded in XX that the proposals, when measured against the objectives of the policy do not conflict therewith and as such are not contrary to Policy NE 5.

25. In the absence of acknowledged harm of the appeal proposals to the character and appearance of the countryside – that is no harm arises from the appeal proposals to the qualities and interest this policy seeks to protect - LF further agreed in XX that the appeal did not conflict with any of the criteria to the policy and axiomatically the proposals accorded with this Policy also. It can not be sustained as a development plan policy reason for refusal.

26. Of the stated reasons for refusal in the 1st RR one is therefore left with Policy BE 20 as being the sole reason remaining with which the Council could lay claim the proposals are contrary to. In this regard the debate in XX centred on criterion B. LF agreed that the appeal proposals accorded with the other relevant criteria of this policy.

27. LF agreed with me that the key objectives of this policy are (i) to avoid detrimental impact to the fabric and character of rural building (it was agreed the appeal proposals did not offend this criteria) and (ii) proposals should not have a harmful effect on the character and appearance of the countryside (already conceded – see above).

28. On the evidence you have heard we ask you to conclude that Barn C as it stands is structurally sound (agreed by LF in XX) and that the physical external works proposed to Barn C do not constitute "significant adaptations" (the oriole window and minor adjustment to window in north elevation). LF agreed in XX that these works did not constitute "significant adaptation". Similarly for the reasons set out above the extent of re-building required to the external walls to High Barn do not constitute "significant rebuilding". Accordingly, the appeal proposals do not offend criterion B and consequently as all other criteria of the Policy are met the appeal proposals do not breach Policy BE 20 or its objectives.

29. Given the Council's acknowledgement in XX (and SOCG) 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, it is my submission that the Council's subjective assessment of whether or not the scale of rebuilding involved is more or less significant, becomes irrelevant. Policy objectives are not demonstrably harmed and accordingly no breach of policy can arise, irrespective of the scale of rebuilding.

30. The 2005 permitted 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 – planning permission was accordingly granted. It follows given the appeal proposals are identical to that development approved (and implemented), and as agreed by LF, they accord with the policies and policy objectives of the relevant development plan.

31. It has taken XX of the Council's evidence to demonstrate that their understanding and application of their own Local Plan policy context is

woefully lacking and inept. We are dealing with a public process here and it should not have to take an appellant to the cost of a public inquiry for the Council to acknowledge that their behaviour has unnecessarily resulted in their interpretation and application of policy falling well short of the mark. This has consequently put the appellant to the unnecessary expense of these proceedings to demonstrate the fundamental failings in the Councils approach.

32. The evidence presented by the appellant 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 unforeseen structural decay (such as here – or indeed as with the case of the adjacent farmhouse – DJP Appendix 6) should reasonably lead the Council to engage purposively with its own policies and consider the proposals against the objectives of relevant (countryside) policy and to concluded if the merits of the case demand (as here) that where rebuilding gives rise to no materially greater impact planning permission should be granted.

33. LF now agrees that 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 and this appeal avoided.

34. Similarly the exposure of the Council's shameful misrepresentation both to Committee and in LF's evidence of the SPG 'policy' on Conversion of Rural Buildings does the Council no credit. It again took XX to expose this significant error that can only have mislead the Planning Committee in considering its decision, given to the SPG is a material consideration. It exposes the lack of credibility that overall should be accorded to the Council's approach to these appeals and its own evidence as presented. On the other hand the evidence of DJP is wholly credible and must in my submission be preferred in weighing the S38 (6) considerations.

35. I submit the appellants have demonstrated in their evidence and through the agreement of LF in XX that the assessment of the appeal proposals against the relevant policy objectives of the development plan is the correct approach to the evaluation of development proposals. XX has exposed the Council's approach to be fundamentally flawed and

constitutes a slavish unjustified and incorrect application of policy. Furthermore, alarmingly LF acknowledged she had misrepresented and misinterpreted policy which has resulted in a refusal of planning permission. This approach is unreasonable and has been unequivocally demonstrated to be untenable.

36. The 2nd reason for refusal can be dealt with shortly. It asserts the proposals will give rise to precedent that would tie the hands of the Council in the future.

37. As a number of the appeal decisions set out in the evidence has demonstrated this is not a novel accusation made purely in respect of these proposals. It has been raised on other occasions (see Appeal decisions as Committee Report (Hollywell Farm Ratby in DJP Appendices) and failed.

37.1 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 established law is 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*).

37.2 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.

38. Each and every application falls to be considered on its merits and the grant of planning permission for this development, given its own particular 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.

39. The Council merely (and briefly assert) nakedly without any supporting evidence the precedent argument. It does begg the question why and on what reasonable basis it was raised at all in this case because:

39.1 The Council failed to refer to it at all in their R6 Statement

39.2 The evidence of LF does not address the issue save for 'mention' in three and a bit lines at the end of her Proof when the assertion is merely repeated.

40. LF confirmed in evidence that she was aware of the burden placed on local planning authorities by the Courts when alleging precedent as a reason for refusal to planning permission being granted yet only chose to repeat the assertion rather than produce any evidence to substantiate the allegation in the 2nd RR.

41. This is the most blatant case I have come across in many years at public inquiries of a local planning authority singularly failing to address, as it is required to do by evidence a reason for refusal of planning permission. It is axiomatic that this issue should never have been a raised and it is a travesty and a sad indictment of the conduct of the Council in relation to these appeal proposals that it should have been necessary to address this issue. It is abundantly clear this issue is wholly without merit and indefensible.

42. 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.

43. I invite you to treat this reason for refusal with the disdain it deserves.

44. For the reasons set out above I invite you to conclude on the evidence that both the appeal proposals accord with the relevant policies of the development plan and no material considerations indicate otherwise. As such I also invite you to grant planning permission for both appeals subject to the conditions we have discussed or such other conditions you may see fit.

John Edmond

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2 July 2009