1 0 JUN 2009


# The Planning Inspectorate

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Mrs T Darke
Hinckley and Bosworth Borough Council
Planning Officer
Council Offices
Argents Mead
Hinckley
Leicestershire
LE10 1BZ

Your Ref: 09/00029/FUL

Our Ref: APP/K2420/A/09/2099681/NWF
Further appeal references at foot of letter

Date: 9 June 2009

Dear Mrs Darke

**Town and Country Planning Act 1990**
**Appeals by Graham Wragg**
**Site at Common Farm, Barton Road, Carlton, Carlton, CV13 0RL**

I enclose a copy of the appellant's proofs of evidence.


DEVELOPMENT SERVICES
1 0 JUN 2009
RECEIVED


Yours sincerely

Jenny Howland

325(BPR)

**Further appeal references:- 2101955**

*You can now use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is -*
*http://www.pcs.planningportal.gov.uk/pcsportal/casesearch.asp*
*You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button*


INVESTOR IN PEOPLE
POSITIVE ABOUT DISABLED PEOPLE

**Howland, Jenny**

**From:** Susan Slatter [susanslatter@marrons.net]
**Sent:** 03 June 2009 17:04
**To:** Team P2
**Subject:** Appeal Refs: APP/K2420/A/09/2099681/NWF & 2101955/NWF

Please see attachments.

Sue Slatter
David Prichard's secretary

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Mr S Bartle
The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol, BS1 6PN

**By post and e-mail: team2@pins.gsi.gov.uk**

03 June 2009

Our Ref: DJP SJS 3323-3-8
Your Ref:

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990**
**APPEAL GRAHAM WRAGGE**
**SITE AT COMMON FARM, BARTON ROAD, CARLTON, NUNEATON, CV13 0RL**
**APPEAL REFERENCE NO: APP/K2420/A/09/2099681/NWF & 2101955/NWF**

With regard to the above, please find enclosed a copy of the appellant's Proof of Evidence.

Hard copies of the Proof of Evidence, Summary Proof and Appendices follow in today's post.

Yours faithfully

**MARRONS**

Enc

cc: M Coles – Hallam
J Bottrill – HSPP Architects

# GRAHAM WRAGG

DEVELOPMENT SERVICES

10 JUN 2009

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## TOWN AND COUNTRY PLANNING ACT 1990

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

## SUMMARY 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**

**Marrons**
**1 Meridian South**
**Meridian Business Park**
**Leicester**
**LE19 1WY**

**Tel: 0116 289 2200**
**Fax: 0116 289 3733**
**Ref: 3323-3-8**

## 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. 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. 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.

2. 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. .

3. 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 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 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.

5 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. The Council's subjective judgment that the appeal proposals 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).

11. 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.

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

13. 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 the 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.

14. 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.

15. I have shown in my evidence that 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 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.

16. 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.

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

**APPEALS BY**

**MR ROY BORTHWICK**

**SITE AT PINEWOOD LODGE HOLIDAY VILLAGE**

**OVERTON ROAD, IBSTOCK**

**LE67 6PD**

DRAFT

# STATEMENT OF COMMON GROUND

**JUNE 2009**

**PINS REF APP/K2420/A/09/2097838/NWF; APP/K2420/A/09/2097840; and APP/K2420/A/09/2097837**

**LPA REFS: 08/00627/FUL; 08/00635/COU; and 08/00636/COU**

This statement addresses the following areas of common ground.

1 Description of the site;
2 Planning history of the site;
3 Development plan – relevant policies;
4 The Local Development Framework;
5 National Planning Guidance;
6 Relevant Drawings to be considered in regard to each of the proposals; and
7 Matters which are not in dispute.

## 1 Description of the Site

1.1 The site known as "Pinewood" lies approximately 2 miles south of Ibstock. It is located to the east of the A447, Hinckley Road and is partly within the designated National Forest area. It is fairly level over its extent apart from the lake area where the ground has been built up to the north, it extends to 0.95 hectares.

1.2 The Pinewood Lodge Holiday Village includes a large detached dormer style dwelling. The property is white rendered with a tiled roof. The dwelling was built before the 1950s and was extended and altered in the early 1990s. Attached to the dwelling on the north elevation is a small, mainly glazed structure about 3.3 m long, 7.4 m wide and 6.3 m in height. Adjoining this small glazed structure is the existing conservatory (the subject of the enforcement appeal APP/K2420/C/05/2005470). The conservatory is a mainly glazed structure about 12.5 m long, 7.1 m wide, and 3.2 m in height. Adjoining the existing conservatory, is a single storey white rendered building which currently provides w.c. facilities.

1.3 Within the north-eastern corner of the site is an existing lake with a grass perimeter and a gazebo island feature with access bridge. There is conifer planting adjacent to the southern edge of the lake.

1.4 To the south-west of the lake is the block consisting of nine holiday chalets. This building is single storey white rendered with a concrete tiled roof. The block is approximately 34m long and 6m wide. Each of the chalets has an individual door and window on the front elevation. To the front of the holiday chalets, is a parking area.

1.5 To the south of the holiday chalets, is a single storey building comprising a swimming pool. The building is part brick and glazed.

1.6 Along the south western boundary of the site, adjacent to the swimming pool building is a detached garage which is white rendered and tiled with roof-lights inserted. The garage is approximately 13.1m in length, 11.2m wide, and 6.7m pitch height.

1.7 Adjacent to the house and the swimming pool there is a single storey building. It is white rendered and with a tiled roof. Part of the building is incomplete in the north-eastern corner. This is the proposed location for the staff room. A covered way is provided along the front elevation of the building. The building currently comprises a boiler room, shower room and WC facilities and laundry room together with a utility room used by the appellant only.

1.8 Along the Hinckley Road frontage is an existing grass field with a strong mature native hedgerow to all boundaries.

1.9 There are two existing access points taken from Overton Road. The first is located approximately 45m from the junction of Overton Road. This is an existing private access driveway to the house and used solely by the appellant. The access is flanked by mature pine trees and shrubbery. The second access from Overton Road is for visitor and general use. It is located approximately 115 m from the junction with the A447. A large willow tree is located to the left of the access.

1.10 The front garden of the property has numerous mature pines with underplanted shrubbery providing a screening from Overton Road.

1.11 The south western boundary of the site consists of a dense native hedgerow.

1.12 To the north of the site is an established woodland area (part of the designated National Forest). Beyond to the south and towards the west of Pinewood is land in agricultural use. Beyond the south-eastern boundary of the grass field (fronting the A447) is the residential property, Belchers Cottage.

## 2 Planning History of the Site

2.1 There have been numerous applications for development at Pinewood. An appeal against the refusal of planning permission for the erection of one dwelling was dismissed on 20 March 1973.

2.2 Subsequently, planning permission was refused (under reference 76/1290/4) for the erection of one dwelling and stable on 26 October 1976.

2.3 Planning permission was refused on 27 March 1990 (under reference 90/0165/4) for extensions to bungalow for residential use. A further planning application for extensions to dwelling (under reference

90/0572/4) was granted planning permission on 26 June 1990. Following from that a further planning application for alterations to the dwelling (under reference 91/0005/4) was granted planning permission on 18 February 1991.

2.4 Planning permission was granted (under reference 91/0738/4) for the erection of garages and outbuildings on 13 September 1991.

2.5 There were grants of planning permission in 1998 (under reference 98/00455/FUL) for the retention of a domestic garage. Following from that, planning permission was sought (under reference 98/0459/COU) for the change of use of ancillary domestic building to nine tourist/holiday accommodation. This proposal was refused planning permission in September 1998, however, a further planning application (under reference 98/00764/COU) for the same development was granted planning permission in November 1998.

2.6 On 29 May 2005, an enforcement notice (under reference 04/00196/UNUSE) was issued by the Council for the following breach of planning control as alleged in the notice as:

- Without planning permission, the change of use of the residential garage on the land from a garage used in connection with the dwelling to a garage and a residential flat.

2.7 On 29 September 2005, a further enforcement notice (also under reference 04/00196/UNUSE) was issued by the Council for the following breach of planning control as alleged in the notice that without planning permission, the construction of:

- A conservatory used as a bar not wholly or mainly in connection with the residential use of the attached dwelling; and

- A recreational building not wholly or mainly in connection with the residential use of the attached dwelling.

2.8 Both enforcement notices were appealed by the appellant and were the subject of a public inquiry in 2006 (under reference APP/K2420/C/05/2004569 and APP/K2420/C/05/2004570). On 1 June 2006, the Inspector dismissed both appeals and each of the enforcement notices were upheld with correction.

2.9 On 10 February 2006, an enforcement notice was served for the change of use of land within the open countryside to use as a site for the stationing of a mobile home for purposes of human habitation. This enforcement notice was the subject of a planning enforcement appeal which was subsequently withdrawn.

2.10 Planning permission was refused on 19 May 2006 (under reference 06/00262/COU) for the stationing of one caravan as additional accommodation for tourist/holiday use.

## 3 Development Plan

3.1 The development plan comprises:

- The East Midlands Regional Plan (EMRP); and
- The 'saved' policies of the Hinckley and Bosworth Local Plan (Adopted, February 2001).

3.2 Policies 1, 4 and 42 of the EMRP; and policies BE1, NE5, NE10, NE21, NEC22, REC21 and T5 of the Hinckley and Bosworth Local Plan are all potentially relevant to the consideration of the appeal applications.

## 4 The Local Development Framework

4.1 Work commenced on the review of the Local Plan by the LPA in 2004. An Issues & Options Paper was prepared and the Proposed Submission Core Strategy was considered by the Council in 2008. A Schedule of Proposed Changes to the Proposed Submission Core Strategy was considered by the Council in September 2008. The Core Strategy was submitted to the Secretary of State in January 2009. The Examination in Public commenced on 19 May 2009 and closed on 29 May 2009.

## 5 National Planning Guidance

5.1 National planning guidance relevant to the appeal includes PPS1 – *Delivering Sustainable Development;* PPS7 – *Sustainable Development in Rural Areas;* and the *Good Practice Guide on Planning for Tourism*

## 6 Relevant Drawings to be considered in regard to each of the proposals

### a) Appeal Reference: APP/K2420/A/2097837/NWF

6.1 Proposal for the demolition of the existing conservatory and rebuild to provide a new family dining/breakfast room with bar, w.c. facilities and reception area together with change of use of part ground floor of dwelling to provide a tea room/dining area and kitchen.

Drawings are:

- Site Location Plan (1:1250);

- Block Plan (1:1000);
- Drawing No: 1/1/08 – Existing Plan; and
- Drawing No: 1/2/08 – Proposed Plan.

**b) Appeal Reference: APP/K2420/A/2097838/NWF**

6.2 Change of use of part garage to provide two holiday chalets and manager's accommodation

- Site Location Plan (1:1250);
- Block Plan (1:1000); and
- Drawing No: 1/3/08 – Plans/Section/Elevations

**C) Appeal Reference: APP/K2420/A/2097840/NWF**

6.3 Change of use of store to provide a staff room with shower facilities

- Site Location Plan (1:1250);
- Block Plan (1:1000); and
- Drawing No: 1/1/4/08 – Plan/Section/Elevations

## 7 Matters Which Are Not In Dispute Between Parties

7.1 The following matters are not in dispute between the parties:

A The Local Plan indicates that generally all land outside the defined limits of development of settlements lies within the open countryside for the purposes of planning policy. The appeal site lies within the open countryside for planning purposes. Policy NE5 of the Local Plan therefore applies.

B The LPA accept there is a shortage of tourist accommodation within the Borough.

DRAFT

**Signed on behalf of the appellant by Sally Stroman**

.....

**Position. Agent for the appellant** **Date June 2009**

**Signed on behalf of the LPA**

.....

**Position.....Date.....June 2009**

DRAFT

## Howland, Jenny

**From:** Sally [sally@wilbrahamassociates.co.uk]
**Sent:** 11 June 2009 08:54
**To:** Team P2
**Subject:** Appeals by Mr Roy Borthwick, Site at Pinewood Lodge Holiday Village, Overton Road, Ibstock

**YOUR REFERENCE: APP/K2420/A/09/2097838/NWF; APP/K2420/A/09/2097840 and APP/K2420/A/09/2097837**

**For the attention of: Jenny Howland**

I refer to the above planning appeals and attach relevant correspondence in connection with the Statement of Common Ground.

On return to the office this morning, I have now received a response from the Council on the content of the Statement of Common Ground (copy attached) and will now amend the document accordingly in order to be signed by both parties.

I trust this arrangement is acceptable to you.

Yours sincerely

Sally Stroman

Sally Stroman MRTPI

Wilbraham Associates Limited

Tel: 01788 562233

www.wilbrahamassociates.co.uk

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Our Reference: SS/drb/B66
Your Reference: APP/K2420/A/09/2097838/NWF;
APP/K2420/A/09/2097840 & APP/K2420/A/09/2097837

Ms Howland
The Planning inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

10 June 2009

Dear Ms Howland

**Appeals by Mr Roy Borthwick**
**Site at: Pinewood Lodge Holiday Village, Overton Road, Ibstock, LE67 6PD**
**Statement of Common Ground**

I refer to the above appeals.

Whilst we have provided you with copies of the Proof of Evidence on behalf of the appellant, the Statement of Common Ground has yet to be agreed with the local planning authority and therefore at this stage I have enclosed two copies of the draft statement. To date, we are awaiting the Council's comments on the content of the document and I would hope to have this resolved shortly.

I trust the above clarifies the position on this matter. I will of course keep you advised on the progress made on resolving the statement. In the interim, should you wish to discuss this matter further, please do not hesitate to contact me at this office.

Yours sincerely

Sally Stroman MRTPI
Wilbraham Associates Ltd
Enc

**APPEALS BY**

**MR ROY BORTHWICK**

**SITE AT PINEWOOD LODGE HOLIDAY VILLAGE**

**OVERTON ROAD, IBSTOCK**

**LE67 6PD**

DRAFT

# STATEMENT OF COMMON GROUND

**JUNE 2009**

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1.3 Within the north-eastern corner of the site is an existing lake with a grass perimeter and a gazebo island feature with access bridge. There is conifer planting adjacent to the southern edge of the lake.

1.4 To the south-west of the lake is the block consisting of nine holiday chalets. This building is single storey white rendered with a concrete tiled roof. The block is approximately 34m long and 6m wide. Each of the chalets has an individual door and window on the front elevation. To the front of the holiday chalets, is a parking area.

1.5 To the south of the holiday chalets, is a single storey building comprising a swimming pool. The building is part brick and glazed.

1.6 Along the south western boundary of the site, adjacent to the swimming pool building is a detached garage which is white rendered and tiled with roof-lights inserted. The garage is approximately 13.1m in length, 11.2m wide, and 6.7m pitch height.

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## 2 Planning History of the Site

2.1 There have been numerous applications for development at Pinewood. An appeal against the refusal of planning permission for the erection of one dwelling was dismissed on 20 March 1973.

2.2 Subsequently, planning permission was refused (under reference 76/1290/4) for the erection of one dwelling and stable on 26 October 1976.

2.3 Planning permission was refused on 27 March 1990 (under reference 90/0165/4) for extensions to bungalow for residential use. A further planning application for extensions to dwelling (under reference

90/0572/4) was granted planning permission on 26 June 1990. Following from that a further planning application for alterations to the dwelling (under reference 91/0005/4) was granted planning permission on 18 February 1991.

2.4 Planning permission was granted (under reference 91/0738/4) for the erection of garages and outbuildings on 13 September 1991.

2.5 There were grants of planning permission in 1998 (under reference 98/00455/FUL) for the retention of a domestic garage. Following from that, planning permission was sought (under reference 98/0459/COU) for the change of use of ancillary domestic building to nine tourist/holiday accommodation. This proposal was refused planning permission in September 1998, however, a further planning application (under reference 98/00764/COU) for the same development was granted planning permission in November 1998.

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- A recreational building not wholly or mainly in connection with the residential use of the attached dwelling.

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## 3 Development Plan

3.1 The development plan comprises:

- The East Midlands Regional Plan (EMRP); and
- The 'saved' policies of the Hinckley and Bosworth Local Plan (Adopted, February 2001).

3.2 Policies 1, 4 and 42 of the EMRP; and policies BE1, NE5, NE10, NE21, NEC22, REC21 and T5 of the Hinckley and Bosworth Local Plan are all potentially relevant to the consideration of the appeal applications.

## 4 The Local Development Framework

4.1 Work commenced on the review of the Local Plan by the LPA in 2004. An Issues & Options Paper was prepared and the Proposed Submission Core Strategy was considered by the Council in 2008. A Schedule of Proposed Changes to the Proposed Submission Core Strategy was considered by the Council in September 2008. The Core Strategy was submitted to the Secretary of State in January 2009. The Examination in Public commenced on 19 May 2009 and closed on 29 May 2009.

## 5 National Planning Guidance

5.1 National planning guidance relevant to the appeal includes PPS1 – *Delivering Sustainable Development;* PPS7 – *Sustainable Development in Rural Areas;* and the *Good Practice Guide on Planning for Tourism*

## 6 Relevant Drawings to be considered in regard to each of the proposals

### a) Appeal Reference: APP/K2420/A/2097837/NWF

6.1 Proposal for the demolition of the existing conservatory and rebuild to provide a new family dining/breakfast room with bar, w.c. facilities and reception area together with change of use of part ground floor of dwelling to provide a tea room/dining area and kitchen.

Drawings are:

- Site Location Plan (1:1250);

- Block Plan (1:1000);
- Drawing No: 1/1/08 – Existing Plan; and
- Drawing No: 1/2/08 – Proposed Plan.

**b) Appeal Reference: APP/K2420/A/2097838/NWF**

6.2 Change of use of part garage to provide two holiday chalets and manager's accommodation

- Site Location Plan (1:1250);
- Block Plan (1:1000); and
- Drawing No: 1/3/08 – Plans/Section/Elevations

**C) Appeal Reference: APP/K2420/A/2097840/NWF**

6.3 Change of use of store to provide a staff room with shower facilities

- Site Location Plan (1:1250);
- Block Plan (1:1000); and
- Drawing No: 1/1/4/08 – Plan/Section/Elevations

## 7 Matters Which Are Not In Dispute Between Parties

7.1 The following matters are not in dispute between the parties:

A The Local Plan indicates that generally all land outside the defined limits of development of settlements lies within the open countryside for the purposes of planning policy. The appeal site lies within the open countryside for planning purposes. Policy NE5 of the Local Plan therefore applies.

B The LPA accept there is a shortage of tourist accommodation within the Borough.

DRAFT

**Signed on behalf of the appellant by Sally Stroman**

..... .....

**Position. Agent for the appellant** **Date June 2009**

**Signed on behalf of the LPA**

.....

**Position.....Date.....June 2009**

DRAFT

DEVELOPMENT SERVICES

18 JUN 2009

RECEIVED

**APPEALS BY MR R BORTHWICK**

**SITE AT**

**PINEWOOD LODGE HOLIDAY VILLAGE**

**IBSTOCK**

**LEICESTERSHIRE**

# PROOF OF EVIDENCE

**OF SALLY STROMAN**

**FOR THE APPELLANT**

**JUNE 2009**

**PINS REFS: APP/K2420/A/09/2097838/NWF;**

**APP/K2420/A/09/2097840; and**

**APP/K2420/A/09/2097837**

**LPA REFS: 08/00627/FUL; 08/00635/COU; and**

**08/00636/COU**

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## 1. PROFESSIONAL QUALIFICATIONS AND EXPERIENCE

1.1 I am Sally Stroman, Associate of Wilbraham Associates Ltd, Chartered Town Planning Consultants of Rugby. I hold a BA Hons in Urban and Regional Planning, a Bachelor of Town Planning and have been a Member of the Royal Town Planning Institute since 1993.

1.2 My career in town planning spans over fifteen years. Prior to joining Wilbraham Associates in 2007, I worked for seven and a half years for Hepher Dixon, a planning and regeneration consultancy. Between 1992 and 1998, I worked for DTZ, property advisors based in Central London and prior to that for the London Borough of Bromley both within development control and planning policy sections.

1.3 I have extensive experience of preparing and handling applications and appeals for recreational and tourist development.

## 2. INTRODUCTION

2.1 This Proof of Evidence sets out the appellant's case in respect of the appeal against the decisions of Hinckley and Bosworth Borough Council to refuse planning permission for the following development:

a. Demolition of the existing conservatory and rebuild to provide a family dining/breakfast room with bar area, w.c. facilities and reception area together with change of use of part of ground floor dwelling to provide a tea room/dining area and kitchen (Under Reference: 08/00627/FUL): **Appeal A**;

b. Change of use of part of garage to provide two holiday chalets and manager's accommodation (Under Reference: 08/00635/COU): **Appeal B**; and

c. Retention of building and use to provide a staff room and shower facility (Under Reference: 08/00636/COU): **Appeal C**.

2.2 The planning applications were accompanied by the following documents:

- A covering letter explaining the proposal and assessing it against planning policies;

For Application Ref: 08/00627/FUL:

- 1 : 1250 scale OS Site Location Plan;
- 1 : 1000 scale Block Plan:
- Drawing Number: 1/1/08 – Existing plan;
- Drawing Number: 1/2/08 – Proposed plan;
- Design and Access Statement; and
- Access Statement.

For Application Ref: 08/00635/COU:

- 1 : 1250 scale OS Site Location Plan;
- 1 : 1000 scale Block Plan; and
- Drawing Number: 1/1/3/08.

For Application Ref: 08/00636/COU:

- 1 : 1250 scale OS Site Location Plan;
- 1 : 1000 scale Block Plan; and
- Drawing Number: 1/1/4/08.

2.3 There was an exchange of correspondence in relation to the applications and the letter of 5 August 2008 refers.

2.4 Whilst the three separate planning appeals are all to be considered at the same public inquiry, it is important to note that the proposals were the subject of three independent planning applications and as such should be assessed on their own individual merits.

**Appeal A**

2.5 On 29 August 2008, planning permission was refused for the application under reference: 08/00627/FUL for the following reasons:

*The proposal, if permitted, could result in an unacceptable increase in traffic using the site's vehicular access and the Overton Road/A447 junction which lacks appropriate visibility for the speed of traffic on the main road which could lead to increased dangers for road users, it is therefore contrary to Policy T5 of the adopted Hinckley and Bosworth Local Plan and the guidance contained within the Leicestershire County Council's Highway Design Guidance "Highways, Transportation and Development".*

*The proposal, if permitted, could result in an unacceptable increase in traffic using an access, which has inadequate width and geometry. That could in turn lead to vehicles reversing onto or off the highway to the detriment of road safety, it is therefore contrary to Policy T5 of the adopted Hinckley and Bosworth Local Plan and the guidance contained within Leicestershire County Council's Highway Design Guidance "Highways, Transportation and Development".*

*The proposed development is excessive in size and scale and if permitted, would be an inappropriate and incongruous element which would have a detrimental effect on the existing dwelling, the site and the open countryside. It is therefore not in accordance with Policy BE1 and NE5 of the adopted Hinckley and Bosworth Local Plan.*

*The proposed development, by virtue of the proposed use would be an unwarranted and unacceptable development harming the character and appearance of the countryside and has the potential to cause additional noise and disturbance to neighbouring properties, this would be contrary to Policies BE1 and NE5 of the adopted Hinckley and Bosworth Local Plan.*

**Appeal B**

2.6 The application under reference: 08/00635/COU was also refused on 29 August 2008 for the following reasons:

*The proposal, if permitted, could result in an unacceptable increase in traffic using an access, which lacks appropriate visibility for the speed of traffic on the lane, which could lead to increased dangers to road safety. Furthermore, the proposal if permitted could result in an unacceptable increase of traffic using an access, which has inadequate width and geometry that could lead to vehicles reversing on to or off the highway to the detriment of road safety. To permit the proposal would therefore not be in accordance with Policy T5 of the adopted Hinckley and Bosworth Local Plan and the guidance contained within Leicestershire County Council's design guidance, 'Highways, Transportation and Development'.*

*The use of part of the building as manager's accommodation is tantamount to a new dwelling capable of being occupied independently to the main dwelling, in the open countryside which would form an unwarranted and unacceptable development harming the character and appearance of the rural landscape, this would be contrary to Policy NE5 of the adopted Hinckley and Bosworth Local Plan.*

*The use of a part of the building as manager's accommodation and the change of use of part of the building into two chalets forms an unwarranted and unacceptable development harming the character and appearance of the countryside and has the potential to cause additional noise and disturbance to neighbouring properties, this would be contrary to Policy BE1 and NE5 of the adopted Hinckley and Bosworth Local Plan.*

**Appeal C**

2.7 The application under reference: 08/00636/COU was refused on 29 August 2008 for the following reasons:

*The cumulative effect of this proposal which involves the change of use of an unauthorised building, together with other development on site is considered to be inappropriate and unjustified in this location, it is therefore contrary to Policies BE1 and NE5 in the adopted Hinckley and Bosworth Local Plan.*

*The proposed use of the development has the potential to cause noise and disturbance to neighbouring properties to the site which does not accord with Policies BE1 of the adopted Hinckley and Bosworth Local Plan.*

**Statement of Common Ground**

2.8 A Statement of Common Ground has yet to be agreed with the Council and a draft version has been forwarded separately to the Planning

Inspectorate. This sets out a description of the site, planning history, relevant development plan policies, national planning guidance and matters which are not in dispute between the parties.

**Location/Photographs of the Site**

2.9 Photographs of the site appear at **Appendix 1**. A site context plan is shown on the map at **Appendix 2.**

**Planning History**

2.10 A detailed description of the planning history of the site is provided within the Statement of Common Ground. However, the approach the Council have adopted to determine applications for development at Pinewood Lodge is instructive. Thus, in November 1998, the Council granted planning permission under reference 98/00764/COU for the change of use of an ancillary domestic building to nine tourist/holiday accommodation units. A copy of the committee report appears at **Appendix 3**. The Council's assessment of this proposal stated that the proposed use was unlikely to cause a detrimental affect to neighbours' amenities. With regard to traffic levels, it was considered that the proposed use would be unlikely to generate much additional vehicular traffic.

2.11 Prior to this, a previous application for similar development (under reference 98/00459/COU) had been refused planning permission on grounds of the likely intensification in traffic use of an unsatisfactory access onto Overton Road; and traffic turning onto/off a Class I road where traffic speeds were high and visibility to the north was restricted. The resubmitted planning application sought to include improvements to the access (ie by widening the gates and setting them back 5 metres; and removing and cutting back some hedgerow) together with the removal of some lower growth on a tree on the right of the Overton Road/A447 junction. The proposed works resulted in the Highway Authority raising no objection to the proposal subject to highway conditions. The highway works were undertaken following the grant of planning permission.

2.12 At the time of the consideration of the proposal, the policies within the emerging Hinckley and Bosworth Local Plan were applied in the assessment of the proposed development. The committee report referred to emerging Policy REC28, which became Policy REC23 in the Adopted Local Plan. (This policy is no longer saved). A copy of Policy REC28 is provided in **Appendix 5**. Within the policy's supporting text, it states,

*Because of the importance of environmental considerations in the countryside, proposals for chalet and holiday homes will be resisted, as they tend to be conspicuous and detract from the attractiveness of rural areas. However, there may be instances where chalet or holiday homes may be permitted on a small scale, if associated with an existing or proposed tourism/recreational facility and provided that the development is sympathetic to the character of the area and satisfies the other policy considerations of the plan.*

2.13 The Local Planning Authority clearly concluded that the proposals were associated with an existing tourism/recreational facility. The committee report (as provided in **Appendix 3)** acknowledged the presence of the fishing lake as providing a low key recreational facility. The Local Planning Authority must have also concluded that the proposals were sympathetic to the character of the area.

2.14 Furthermore, within the planning history section of the proof of evidence of the Council's Senior Planning Enforcement Officer, Ahsan Ghafoor, provided at the enforcement appeals' inquiry (APP/K2420/C/05/2004569 and APP/K2420/C/05/2004570), the Officer stated the following:

*The planning history of the site clearly relates to a residential use. However, in 1998 permission was granted for the outbuildings to be converted into chalet accommodation under exceptional justification. These justifications relate to prompting tourism within the National Forest and rural areas. The conditions attached to the 1998 permission again reflect such an objective.*

A copy of this extract from the Council's proof appears at **Appendix 4.**

2.15 In summary, by granting planning permission for the change of use to provide nine tourist/holiday chalets, the Council accepted in principle that tourist development was an appropriate use of the site, given the promotion of tourism within the National Forest and rural areas; that it would result in no detrimental harm to, and was compatible with, the surrounding area, the open countryside and the National Forest; and that it was unlikely to generate additional vehicular traffic.

2.16 Appeal B is similar to the above proposal in that, by the re-use of an existing building on the site, it seeks to provide new accommodation in connection with an existing tourism facility. In light of the above, I consider that the proposals pursued under appeal B, in particular the change of use to provide two chalet units, does not form an unacceptable development in this location given the decision on the previous proposal when the Council considered the Pinewood site was suitable for tourist development.

2.17 Furthermore, the grant of planning permission for the retention of the domestic garage (Application Reference: 98/00455/FUL) located on the south western boundary of the site is also of relevance. The garage is approximately 13.1m in length, 11.2m wide, and 6.7m pitch height. Whilst a planning condition was imposed to restrict the use of the garage to remain incidental to the *enjoyment of the dwellinghouse,* the Council accepted the erection of a building of substantial size and by implication concluded that it would not have a detrimental effect on the existing buildings, the site or the open countryside.

2.18 As described within the Statement of Case, on 29 May 2005, an enforcement notice (under reference 04/00196/UNUSE) was issued by the Council for the following breach of planning control:

- Without planning permission, the change of use of the residential garage on the land from a garage used in connection with the dwelling to a garage and a residential flat.

2.19 Following from that on 29 September 2005, a further enforcement notice (also under reference 04/00196/UNUSE) was issued by the Council for the following breach of planning control, namely without planning permission, the construction of:

- A conservatory used as a bar not wholly or mainly in connection with the residential use of the attached dwelling; and

- A recreational building not wholly or mainly in connection with the residential use of the attached dwelling.

2.20 Both enforcement notices were appealed by the appellant (under reference APP/K2420/C/05/2004569 and APP/K2420/C/05/2004570) and were dealt with by way of public inquiry in 2006. On 1 June 2006, the Inspector's decision dismissed both appeals and each of the enforcement notices was upheld with correction.

2.21 The Council's Rule 6 Statement refers to similar issues having been considered and dismissed on appeal (namely the enforcement appeals). However, the previous Inspector appointed to the enforcement appeals did not consider the planning merits of the allegedly unauthorised development. He noted that *since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.* Accordingly, the Inspector dealt with the appeals solely under grounds (c) and (d). The enforcement appeals did not therefore deal with the planning merits of the unauthorised development.

## 3. PLANNING POLICIES

### National Planning Guidance

3.1 Planning Policy Statement 1 (PPS1) - *Delivering Sustainable Development* – was published in February 1997 and sets out the national planning policy framework for delivering the Government's different aspects of land use planning.

3.2 PPS1 advises that planning should facilitate and promote sustainable and inclusive patterns of urban and rural development by:

- Making suitable land available for development in line with economic, social and environmental objectives to improve people's quality of life;
- Contributing to sustainable economic development;
- Protecting and enhancing the natural and historic environment, the quality and character of the countryside, and existing communities;
- Ensuring high quality development through good and inclusive design, and the efficient use of resources; and
- Ensuring that development supports existing communities and contributes to the creation of safe, sustainable, liveable and mixed communities with good access to jobs and key services for all members of the community.

3.3 Planning Policy Statement 7 (PPS7) - *Sustainable Development in Rural Areas* – was published in August 2004 and sets out the Government's objectives for the rural areas, including county towns and villages and the wider, largely undeveloped countryside up to the fringes of larger urban areas.

3.4 Paragraph 34 of PPS7 recognises that tourism and leisure activities are vital to many rural economies. As well as sustaining many rural businesses, these industries are a significant source of employment and help to support the prosperity of county towns and villages, and sustain historic country houses, local heritage and culture.

3.5 Advice contained within paragraph 35 of PPS7 goes on to state that local planning authorities should allow appropriate facilities needed to enhance visitors' enjoyment, and/or improve the financial viability, of a particular countryside feature or attraction, providing they will not detract from the attractiveness or importance of the feature, or the surrounding countryside.

3.6 The Pinewood site is an established tourist business and, as I explained above, the Council have acknowledged that its use is appropriate in this location. It is not unreasonable for the appellant to seek to improve and enhance the facilities on offer on the site for the benefit of visitors to the area. It cannot be government policy that, if a tourist site proves to be successful, it should not be allowed to expand or enhance its facilities. The Pinewood site currently provides a benefit in terms of the rural economy by fulfilling a recognised need to extend the range of tourist accommodation available in the locality, by bringing visitors to the area and by providing a source of local employment. Approval of the present proposals would only serve to increase that benefit. I consider that the appeal proposals comply with the advice contained within PPS7.

3.7 *Good Practice Guide on Planning for Tourism* was published in May 2006 and replaced PPG21. It is regarded as guidance in the preparation of development plans as well as a material consideration in individual planning decisions. The guide recognises that tourism, in all its forms, is of crucial importance to the economic, social and environmental wellbeing of the country. The planning system has a vital role to play in terms of facilitating development and the improvement of tourism in appropriate locations.

3.8 The guide acknowledges the provision of essential facilities for visitors is vital for tourism in rural areas, reinforcing the guidance contained within PPS7. As outlined previously, where there is an already established tourist use, the local planning authorities should accept that further proposals may arise as a result of the success of the facility and in order to secure the future viability of the business. Provided that it can be demonstrated that the proposals will not detract from the attractiveness or the characteristics of the area, a positive approach should be taken by the local planning authority in assessing new development proposals.

3.9 The guidance identifies the following key planning issues in the consideration of proposals for tourist development:

- where the development is located – developments need to be located where they are accessible to visitors (and for many, but not all developments, by other means than just by the private car);
- where they do not have an adverse impact upon sensitive locations;
- how they are designed – developments should be attractive to users, they need to work well in functional terms and they need to use natural resources in an efficient manner; and

- how they fit into their surroundings – developments need to respect their environment and compliment them rather than detract from them. They should be designed to have a positive impact upon the landscape, the historical setting and upon ecology.

3.10 In assessing the appeal proposals, whilst the location of the development is within the open countryside and the National Forest, the site has been considered suitable with the Council's grant of planning permission for tourist related development, in particular the change of use to provide nine holiday chalets.

3.11 Turning to the issue of proposals not having an adverse impact upon sensitive locations and how they fit into their surroundings, the Council have accepted in the past substantial new built development in this location. As to the present proposals, the use of the ground floor of the existing garage to provide two additional holiday chalets makes use of an existing building and (as I shall demonstrate) the proposed new build proposals relate well to the existing built form on the site. The Council accept that the site is well screened. I therefore consider the visual impact will be minimal, given the characteristics of the site.

3.12 Finally, the design of the appeal proposals would complement that of the existing buildings on the site and would reflect the site's tourist function.

3.13 The guide states that there will be some locations where development for tourism is sought at a location where it may be difficult to meet the objectives of access by sustainable modes of transport. The tourism location may have been determined by a function or need. Developers and planners may find that in such cases there will be limited opportunities to make the development accessible by sustainable modes of transport or to reduce the number or proportion of visitors by car.

3.14 Chapter 5 of the guide sets out key planning considerations for tourist development and chapter 6 provides advice on determining tourism proposals. Annex A provides further guidance in respect of tourist accommodation and also refers to the provision of staff accommodation required in particular for holiday parks. The annex recognises that a residential managerial presence is often essential to achieve quality service to the customer, security for the property, and to meet the obligations of health and safety regulations. A copy of Annex A appears at **Appendix 6**.

3.15 Finally, emerging advice contained within the Consultation Draft Planning Policy Statement 4 - *Planning for Prosperous Economies*

(published on 5 May 2009), reinforces my view that local planning authorities should, through their local development frameworks, adopt a positive approach to proposed extensions to existing tourist accommodation, where the scale of the extension is appropriate to its location and where the extension may help to ensure the future viability of such businesses. It also suggests that local planning authorities should ensure that new or expanded holiday and touring caravan sites and chalet developments are not prominent in the landscape and that any visual intrusion is minimised by effective, high-quality screening. I would uphold the view that the appeal proposals would meet with the emerging advice contained within the Consultation Draft PPS4.

**Development Plan Policies**

3.16 The development plan comprises the East Midlands Regional Plan [EMRP] (March 2009); and the 'saved' policies of the Hinckley and Bosworth Local Plan (Adopted, February 2001).

**Regional Spatial Strategy**

3.17 The reasons for the refusal of the appeal applications do not refer to conflict with policies contained within the EMRP (March 2009).

3.18 Policy 1 in the EMRP sets out the Regional Core Objectives whilst policy 2 seeks to promote better design. Policy 42, the only policy in the Regional Plan which deals specifically with tourism, states:

*Local Authorities, EMDA, sub-regional strategic partnerships and other relevant public bodies should seek to identify areas of potential for tourism growth which maximise economic benefit whilst minimising adverse impact on the environment and local amenity. Potentially adverse effects on internationally designated nature conservation sites should be avoided or mitigated. Measures should include:*

- *provision for additional tourist facilities including accommodation close to popular destinations that have adequate environmental and infrastructure capacity, particularly those within walking and cycling distance;*
- *improvements in the quality of existing facilities and services; and*
- *improvements to accessibility by public transport and other non car modes.*

Extracts of these policies appear at **Appendix 7**.

**Local Plan Policy**

3.19 The Hinckley and Bosworth Local Plan was adopted in February 2001 and covers the period to 2006. The reasons for refusal of the appeal applications refer to Policies BE1, NE5 and T5.

3.20 Policy BE1 is a design based policy and sets out a list of ten criteria against which all applications for development need to be considered. Criterion (a) refers to the size, scale and design of proposed development in regard to the *character of the surrounding area.* It is my view that the appeal proposals would relate well to the existing built form present on the site and that the design and use of materials would accord with the existing building materials. Criterion (i) refers to the protection of the amenity of neighbours, a matter which is dealt within the Proof of Evidence prepared by Les Jephson of Acoustic Noise and Vibration (ANV). He concludes that the appeal proposals would not give rise to any noticeable increases in noise levels at surrounding properties and are acceptable in noise terms.

3.21 Policy NE5 seeks to resist development in the countryside save in particular circumstances including for:

- important to the local economy and cannot be provided within or adjacent to an existing settlement; or
- for the change of use, re-use or extension of existing buildings, particularly those of historic value; or
- for sport or recreation purposes.

It is important to note that, neither in the Officers' delegated reports nor in the reasons for refusal, is it suggested that the proposals per se represent inappropriate development in the countryside. The objections to the proposed development are principally to the fact that one or more of the criteria for development in the countryside is or are not met.

3.22 In assessing development proposals in the countryside, there are a number of criteria referred to in the policy. In particular, criterion (i) provides that it should not *have an adverse effect on the appearance or character of the landscape*; and criterion (iv) provides that the proposed development should *not generate traffic likely to exceed the capacity of the highway network or impair road safety.*

3.23 Policy T5 states that, in considering development proposals, the Local Planning Authority will apply Leicestershire County Council's highway design standards in the assessment of schemes. A copy of the policy was not included within the LPAs appeal questionnaires and is therefore provided in **Appendix 8.**

3.24 Saved policies NE10, NE22 and REC21, whilst not referred to within the reasons for refusal, are relevant to the assessment of the appeal proposals. Within the Officer's delegated reports, reference is made to Policy BE20 which deals with the re-use and adaptation of rural buildings. It is my view that the garage, the re-use of which in the present case would provide the additional two holiday chalets, is not a rural building within the meaning of Policy BE20.

3.25 Policy NE10 refers to Local Landscape Improvement Areas. These designated areas were identified following a landscape assessment undertaken by the Council. They are areas of poorer landscape quality in the Borough where there is scope for landscape improvements. The designation is considered to assist in improving the quality of the landscape by providing a focus for environmental improvement measures including landscaping, tree planting and screening. The policy's supporting text states that where part of a local landscape area falls within the boundary of the National Forest, the National Forest planting standards shall take precedence. A copy of the policy was not included within the LPAs appeal questionnaires and is therefore provided in **Appendix 8**.

3.26 A copy of Policy NE22 was provided within the LPAs appeal questionnaire. This policy sets out a series of criteria for the consideration of development proposals within the National Forest and planting requirements.

3.27 Policy REC21 deals with tourist accommodation. In respect of proposals in the open countryside, the policy states that planning permission will only be granted for new accommodation where it can be demonstrated that such accommodation makes use of existing property, or can be satisfactorily integrated within the scale of the existing buildings with which it is associated. In all cases, the policy goes on to state that proposals should satisfy the relevant plan criteria for design, siting and highway considerations in respect of both residential and recreational development. A copy of the policy was not included within the LPAs appeal questionnaires and is therefore provided in **Appendix 8**.

3.28 It is my view that the policy infers that tourist accommodation is an acceptable use within the open countryside provided that the listed criteria are met. Clearly, the provision of the additional holiday accommodation (**Appeal B**) involves the re-use of an existing building which is related to the existing built development on the site. I consider that the additional accommodation does satisfy the general criteria for design and siting. In respect of the highway considerations, the matter is dealt with in detail in the Statement prepared by Mike Cullington of Pick Everard

3.29 The Proposals Map to the Local Plan identifies the appeal site as lying within the Open Countryside, Local Landscape Improvement Area and partly within the designated National Forest Area.

3.30 The Council has published a Supplementary Planning Guidance - *'Guide to conversion of Rural Buildings'* (Adopted, June 2004). A copy was provided with the LPAs appeal questionnaires. As referred to earlier in regard to Policy BE20, I do not see the relevance of this supplementary planning guidance in the context of these appeals.

## 4. THE CASE ON BEHALF OF THE APPELLANT

### A. The Need for the Development

### GENERAL POLICY CONSIDERATIONS

4.1 Policy 42 in the EMRP advises that development plans and LDFs should seek to identify areas of potential for tourism growth which maximise economic benefit whilst minimising adverse impact on the environment and local amenity. These measures *"should include the provision of additional tourist facilities including accommodation close to popular destinations that have adequate environmental and infrastructure capacity; improvements in the quality of existing facilities and services; and improvements to accessibility by public transport and other non car modes".* The EMRP post dates the Local Plan by 8 years.

4.2 The tourist industry within the Borough is supported within the Regional Economic Strategy for the East Midlands 2006-2020 (RES) together with the East Midlands Tourist Strategy 2003 - 2010 ('Destination East Midlands'). The RES acknowledges that the East Midlands is already a successful tourist destination but adds that there is huge potential for expansion. The visitor economy is recognised within the RES to make a growing contribution to the region's prosperity and productivity. The tourism industry is already vital to the region, with £4.4 billion of annual visitor spending and 150,000 jobs. The RES states that a major growth opportunity is inbound tourism, where there is potential to increase the number of staying visitors. The RES goes on to state that inbound visitors demand high quality provision, both in terms of facilities and services and acknowledges that in general the quality of the offer, particularly in terms of accommodation, needs to be upgraded and is a priority investment.

4.3 Furthermore, an ambition of the RES is for the East Midlands to be one of Europe's top 20 regions by 2010. The Strategy outlines two specific targets for tourism:

- To raise the visitor expenditure to 4.5% of the region's GDP by 2010. In 1999, it represented 3.5% of GDP.

- To increase visitor value rather than volume, by placing greater emphasis on increasing overnight stays. The target is to increase visitor spend in the region by an average of 1.6% per annum by 2005 and by 2% by 2010.

4.4 Taking the RES tourist targets forward, the East Midlands Tourist Strategy sets out the role of tourism within the region. The Strategy

recognises that, given the diverse nature of the region, there is often tension between concerns to protect the environment and the desire of tourism operators to develop their businesses. The Strategy acknowledges that in order to deliver investment in tourism, the region does not create stand-alone attractions but works with other attractions and infrastructure to build the overall critical mass of the destination.

4.5 The Strategy recognises the importance of the National Forest as an *'internal quality recreational resource in the making'*. It acknowledges that around 18 new facilities have been created since the beginning of the Forest's development (including Conkers, Beehive Farm, Rosliston Forestry Centre and the National Memorial Arboretum). The Strategy goes on to state that additional attractions may be appropriate within the National Forest, so long as they are properly integrated into the destination as a whole. The Strategy summarises that the National Forest will take years for it to fulfil its full potential as a destination brand. With continued investment, it could become a *'recreational facility and destination of national significance'*. It also acknowledges the importance of Donnington Park and the considerable number of visitor attendance generated by events.

**LOCAL CONSIDERATIONS**

4.6 In taking the regional strategies forward, the Council have recognised the benefits of local tourist attractions and accommodation and the contribution this can make to the local economy. This is reinforced by the existence of the Hinckley and Bosworth Tourism Partnership (HBTP) formerly known as the Hinckley and Bosworth Promotions. The Partnership's role is to further develop the local area's economy by harnessing the potential of tourism within the area. The Council's commitment to enhancing the tourist economy within the area is reiterated within the Hinckley and Bosworth Promotions Annual Report 07/08, a copy of which is provided in **Appendix 9**.

4.7 This document outlines the initiatives and the way forward for the tourist industry within the Borough. It highlights the achievements within the local area including investments, successful grant outcomes, development proposals and new facilities/attractions; and successful case studies (notably Twycross Zoo and Bosworth Battlefield). The Annual Report was considered by Hinckley and Bosworth Borough Council's Scrutiny Commission on 1 May 2008. A copy of the minutes relating to the reporting of the Annual Report is provided at **Appendix 10.** It is important to note the following record of discussion at the meeting:

*A Member reiterated a point made at the Rural Summit that there was a lack of accommodation in the Borough. It was explained that location*

*and need for hotels was a commercial decision, but since the summit, work had been undertaken with partners to publicise accommodation linking to key events for example at Mallory Park.*

(Our emphasis)

4.8 The Council have recognised the need for further accommodation in the Borough and, whilst planning permission has been granted recently for the extension of two hotels in the Borough, it is important that visitors to the area, who may be attending events such at Donnington and Mallory Park, are provided with a choice of type and price of accommodation available.

4.9 It is also important to highlight that the recent investment at Mallory Park together with the race track's right to stage the Motocross GP event (with up to 41,000 visitors) as well as the British Superbikes event has placed considerable demand for accommodation to be provided in the local area. The Mallory Park circuit is some 7.5 miles away from the Pinewood Lodge site. Thus, enhancing the facilities available would help to alleviate the demand in the local area and would aid in supporting the tourist economy within the Borough. Furthermore, the proposals for Donnington Park (approximately 15 miles from the appeal site) to host the British Formula Grand Prix event for ten years, starting in 2010, will place a greater demand upon existing facilities in the local area.

4.10 In order to understand the position of tourism within the region and to outline the proposals to enhance the facilities at Pinewood, the appellant has been in discussion with tourist organisations, including representatives from LeicesterShire Promotions. This body is responsible for identifying and prioritising tourism development within Leicester and Leicestershire. One of the main aims of the organisation is to identify and facilitate developments that display a planned and responsible approach to tourism development. The appellant commenced discussions with LeicesterShire Promotions in February 2008 when the enhanced facilities at the Pinewood Lodge site were first discussed. Reference to these discussions, as the proposals developed for the appeal site, was outlined to the Council within the detailed covering letter that accompanied the applications.

4.11 To date, the organisation and in particular, the Director of Tourism, David Freisner have been supportive of the appeal proposals at the Pinewood Lodge site. To reinforce this support, the Director of Tourism has provided a letter in connection with the appeals. This appears at **Appendix 11**. The letter outlines the role of LeicesterShire Promotions and provides a resume of the role of tourism in the economy together with setting out aims and objectives for the Borough's role. The letter

acknowledges (please refer to page 5) that there is a very small supply of current self catering businesses; goes on to outline that the Borough is relatively inadequately serviced by current accommodation facilities within the vicinity of the appeal site; and recognises that there are significant opportunities for the supply of additional accommodation services in the area. Whilst the Pinewood Lodge proposed developments are not of a significant scale, the letter states that the proposals do have the potential to reinforce the tourism offer within the Hinckley and Bosworth destination area, further enhancing and adding to the 'attract and disperse' strategy.

4.12 The supporting letter concludes that the organisation supports the development at the Pinewood site. It will benefit the local area economically; will add to the current tourism offer within the Hinckley and Bosworth area; create an improved quality visitor accommodation; add to the current limited accommodation offer available locally; support local employment and economic activity within the rural economy of Leicestershire; and will add to the overall packaged offer available locally and will complement events and activities taking place (eg at Mallory Park and Donnington Park).

**THE APPEAL PROPOSALS**

4.13 So far as the appeal proposals are concerned, Pinewood Lodge Holiday Village is a popular destination for visitors to the area. There is adequate infrastructure capacity to cater for the proposed development and the environment would not be harmed by the proposal. The additional accommodation together with the provision of the new family dining/breakfast room and associated facilities would improve the quality of the existing facilities and services on offer at Pinewood Lodge. The proposed development would also make the Pinewood Lodge Holiday Village more economically secure. I do not consider there is any conflict between the proposal and policy 42 in the EMDP.

4.14 The covering letter to the appeal applications set out why the additional accommodation and enhanced facilities are required. Essentially the accommodation is needed to provide 'budget' accommodation for those attending events in the area. Visitors come from all over the UK and from overseas. Pages 7 to 8 of the letter set out the justification for the proposed development.

4.15 In order to establish what existing facilities there are comparable to the accommodation currently and proposed at the appeal site, I have examined accommodation available within a five mile radius of the site. **Appendix 12** shows that accommodation. A range of accommodation is available, with tariffs from £28.75 to £62. However, in respect of accommodation of a similar tariff and akin to the accommodation

provided at Pinewood, there are a total of 4 rooms available, namely The Granary, Market Bosworth which has 1 room and Measham House Farm, Measham which has a total of 3 rooms. I consider that this clearly demonstrates the lack of 'budget' accommodation and choice available in the local area.

4.16 I consider that the appeal proposals will be of benefit to the local economy arising from the jobs created by the development and through the purchase of services and food and drink, which will be obtained from local suppliers for use in the proposed main family dining/breakfast room and the tea/dining rooms.

4.17 In the light of the above there is justification for the additional accommodation together with the enhanced facilities to be provided at the appeal site. This is clearly accepted by the County's leading tourist organisation, LeicesterShire Promotions and is in accordance with both the RES and the regional tourist strategy.

**B Council's Grounds of Refusal**

4.18 The Council refused planning permission for the three applications for the following summarised reasons:

- highway and traffic concerns (relates to appeals A and B);
- effect on existing dwelling, the site and the open countryside (relates to Appeals A, B and C);
- noise and disturbance to neighbouring properties (relates to Appeals A, B and C).

**APPEAL A**

**Grounds 1 and 2 - Highways and Traffic**

4.19 The Local Highway Authority identified certain concerns in its response to consultation. Those concerns were reflected in the grounds of refusal relating to Appeals A and B. The highway and traffic issues are dealt in detail within the Statement prepared by Mike Cullington of Pick Everard.

4.20 As a result of discussions, the proposed works that are required in order to address their concerns have been agreed with the Highway Authority. A signed undertaking of the highway works required is presented separately within the appellant's proof of evidence (please refer to Appendix 3).

**Grounds 3 and (in part) 4 - Effect on Existing Dwelling, the Site and the Open Countryside**

4.21 The above reason for refusal relates to Appeals A, B and C.

4.22 It is suggested that the development conflicts with policies BE1 and NE5 in the Local Plan.

**(i) Effect on Existing Dwelling**

4.23 The Council suggest that the proposed new family dining/breakfast room (Appeal A) would have a detrimental effect on the existing dwelling. A description of the site, existing buildings and the immediate surrounding area has been provided within the Statement of Common Ground and photographs of the site are provided within **Appendix 1**.

4.24 The existing dwelling was built prior to the 1950's and was extended and altered in the early 1990s. Attached to the dwelling on the north elevation is a small, mainly glazed structure about 3.3m long, 7.4m wide and 6.3m in height. Adjoining this small glazed structure is the existing conservatory (the subject of the enforcement appeal APP/K2420/C/05/2004570). The conservatory is a mainly glazed structure about 12.5m long, 7.1m wide and 3.2m in height.

4.25 The proposed development involves the demolition of the unauthorised conservatory building and the erection of a single storey extension. The extension would project 19.75 m from the existing wall of the dwelling. The width of the extension would be 8.5 m. The ridge height would be lower than the ridge of the existing conservatory roof (measuring 4.8m). It is intended that the materials to be used in the proposed development would be white render with a tiled roof, which would match the existing dwelling and are materials found elsewhere on the site, including the existing holiday chalets.

4.26 The proposed family dining/breakfast room design does reflect the existing material and architectural features present on the site. The Council suggest that, whilst the height of the appeal proposal is subordinate to the dwelling, the projection to the side is inappropriate and incongruous and has a detrimental effect on the existing dwelling. I disagree for two reasons. First, I do not consider that the existing dwelling is of any particular merit or possesses any feature of interest. It is a commonplace building with no special design features and no characteristics of local distinctiveness. Second, the existing dwelling makes no positive contribution to the site or the surrounding area. There are already a number of utilitarian buildings surrounding the house, including the substantial garage and the swimming pool enclosure. Given the extent of the Pinewood site together with the

number of incidental buildings built around the main dwelling, the proposed development would not be detrimental to the main house. I therefore conclude that the proposal would not be in conflict with the character of the building, such as it is, since it has been entirely undermined by the number of lawful outbuildings that have developed on the site.

4.27 The use of part of the residential property to accommodate the tea room/dining room and the extended kitchen alters the function of the dwelling and this together with the extended family dining area are integral in enhancing the facilities available on the site. They are required to be practically linked rather than provided as 'stand alone' developments. Furthermore, given the arrangement of the existing buildings on the site, the proposed development is sited close to existing buildings and, in light of the requirements set out within Policy NE5, I consider that the proposed development is consistent with the scale and character of the existing buildings.

**ii) Effect upon Site and the Open Countryside**

4.28 The Council suggest that all proposals (Appeals A, B and C) would have a detrimental effect on the site and the open countryside.

4.29 The Officer accepted within the delegated report that the site was well screened. The site boundaries consist largely of dense native hedgerow and provide limited visibility outside of the appeal site. The appellant intends to undertake a landscaping scheme to further enhance the existing landscape features. I emphasise that, to a large extent, the openness of the site has been substantially eroded by the incremental development of outbuildings over time. The site provides a mixture of buildings in terms of scale and size.

4.30 Whilst a detailed appraisal of the site has been provided in the Statement of Common Ground, its main characteristic is that it is fairly level apart from the lake area to the north of the site where the ground has been built up. An assessment of the existing landscape features has been prepared by landscape architects, Roger Griffiths Associates, and a copy is provided in **Appendix 13**. As shown on drawing no. PIN1/E/01 there are numerous mature trees around the perimeter of the site which offer a visually attractive setting for the development. All boundaries have mature dense planting providing excellent screening. The Council acknowledged in the consideration of the nine tourist/holiday chalet proposals (under reference: 98/00764/COU) that the site was surrounded by *fairly dense planting* and in regard to the visual impact of the proposed accommodation, the committee report acknowledged that the impact would be minimal *as it is well screened from public areas.*

4.31 In order to enhance the existing landscape features of the site and to assist in the integration of the proposed development (Appeals A, B and C), it is proposed to carry out additional landscaping as part of the proposal. Given that the site falls within open countryside, partly within the National Forest and within a Local Landscape Improvement Area, the appellant acknowledges the need to enhance landscaping on the site in order to respect the local character and importance of the area. As such, the landscape architects, Roger Griffiths Associates, have devised a landscaping scheme which would enhance the existing landscaping in a number of respects. The detail is provided on drawing no. PIN1/E/02, a copy of which is provided in **Appendix 14**. A total of thirteen areas of work are proposed including the reinstatement of hedgerows, planting native woodland tree species and introducing additional reed and marginal planting to the lake shallows to improve biodiversity. I consider that the landscaping proposals respect the local character of the area, enhance the site's attractiveness and will therefore be in line with Local Plan Policy NE10.

4.32 Whilst the appeal site currently provides screening of the site, for the reasons given above the development and in particular the landscaping scheme will enhance the landscape, screen views and provide additional landscaping. Accordingly the proposals fully accord with policies BE1 and NE5.

**Noise and Disturbance**

4.33 There are a small number of dwellings surrounding the site, namely:

1. Belchers Cottage to the south located approximately 80 m from the proposed kitchen facilities and bar area.
2. The Larches to the west located approximately 100 m from the proposed kitchen facilities and bar area.
3. Dwellings on Grange Lane to the south-east, where the closest dwelling is located approximately 150 m from the proposed kitchen facilities and bar area.

4.34 The Council's concern regarding noise and disturbance as a result of the appeal proposals is addressed in the Proof of Evidence prepared by Les Jephson of Acoustic Noise and Vibration (ANV).

**APPEAL B**

**Ground 1 – Highways and Traffic**

4.35 The details relating to highway and traffic issues have been dealt with in paragraphs 4.19 and 4.20 of this Proof and are addressed detail in the Statement prepared by Mike Cullington of Pick Everard.

**Ground 2 – Effect upon the Open Countryside**

4.36 The advice in PPS7, in respect of tourism and leisure development states that the conversion of suitable existing rural buildings to provide hotel and other serviced accommodation should be allowed taking into account the policies on re-use of rural buildings.

4.37 Although the garage is not strictly speaking a rural building, its part conversion to provide the additional two holiday chalets to provide letting bedrooms fully accords with the advice in PPS7.

4.38 The proposed development involves the change of use of an existing building and involves no external alterations to it. The site is well screened by mature planting and the Officer acknowledged within the delegated report that the *visual intrusion on the open countryside is therefore minimum*. The Officer also accepted within the delegated report that the proposal makes use of the existing building without impacting upon its scale and character.

4.39 Turning to the proposed change of use to provide a manager's accommodation, the Council suggest that the provision of the manager's accommodation is tantamount to a new dwelling capable of being occupied independently of the main dwelling and in the open countryside and that it would form an unwarranted and unacceptable development harming the character and appearance of the rural landscape. Thus, it would appear that the LPA's objection is based solely upon the effect of the proposed manager's flat on the open countryside and rural landscape, rather than to any in-principle objection to a new dwelling in the open countryside.

4.40 During the consideration of the proposal and following a site meeting with the Planning Officer, a letter (dated 5 August 2008) was provided to the Council which set out the need to have a site manager living at the site at all times. As detailed, the manager would principally deal with the running and day to day tasks of the site, including general maintenance and repair, upkeep of the facilities and all emergency repair situations. Furthermore, in the absence of the proprietor, the manager would also take responsibility for health and safety for the site including food hygiene, operation of the licensed bar and implementation of all emergency procedures. The site manager would be the only resident within the accommodation.

4.41 In response to a point raised by the Planning Officer, the appellant offered to accept a planning condition restricting the occupancy of the flat for use by the on-site manger only. The Council suggest within the delegated report that such a condition would be "*difficult to police and a suitable condition would be difficult to enforce*". Such an occupancy

condition would be no more difficult to enforce than for example an agricultural worker's condition.

4.42 In light of the above, I do not consider that the change of use of the existing building to provide manager's accommodation could result in any harm to the character or appearance of the countryside.

**Ground 3 – Noise and Disturbance**

4.43 The details relating to the impact of the proposals in terms of noise and disturbance have been dealt within paragraphs 4.33 and 4.34 of this Proof and are dealt in detail within the Proof of Evidence prepared by Les Jephson of Acoustic Noise and Vibration (ANV).

**APPEAL C**

**Ground 1 – Effect upon the Open Countryside**

4.44 The Council suggest that the retention of this building would be inappropriate and unjustified within this countryside location. The Officer accepted within the delegated report that the site is surrounded by fairly dense planting. As outlined earlier, it is the appellant's intention to undertake a landscaping scheme to further enhance the existing landscape features. The Officer goes on to state within the delegated report that the visual impact of this building is *minimal in itself but the cumulative effect of the proposal when viewed with the other ancillary buildings on site is considered to have a detrimental effect on the countryside location.*

4.45 The building is surrounded by existing buildings, namely the main dwellinghouse, the swimming pool building and the detached garage. The opportunities to view the building within and outside the appeal site, are particularly limited given the context of the existing built development. As outlined earlier, the openness of the site has been substantially eroded by the incremental development of outbuildings over time. I consider that, given the position of the building, the functional need to provide such a building will not be detrimental to this countryside location.

4.46 Furthermore, this proposal was the subject of an independent planning application and as such should be assessed on its own individual merits.

**Ground 2 – Noise and Disturbance**

4.47 The details relating to the impact of the proposals in terms of noise and disturbance have been dealt with in paragraphs 4.33 and 4.34 of this

Proof and are dealt in detail within the Proof of Evidence prepared by Les Jephson of Acoustic Noise and Vibration (ANV).

## 5. CONCLUSIONS/SUMMARY

5.1 The Council refused planning permission for the appeal applications (Appeals A, B and C) for three reasons: firstly on the grounds of highways and traffic; secondly, that the proposed development would have a detrimental affect on existing dwellings, the site and the open countryside; and thirdly that the proposed development would cause additional noise and disturbance to neighbouring properties.

5.2 The policies referred to in the reasons for refusal suggest that the development conflicts with Policies BE1, NE5 and T5 in the Local Plan. Policy BE1 indicates that proposals for development will be expected to pay particular attention to a number of elements of design as listed in the criteria.

5.3 Policy NE5 sets out criteria against which proposals for development within the countryside need to be assessed.

5.4 I have assessed the development against the criteria of both policies BE1 and NE5. The openness of appeal site has been substantially eroded over time with the incremental development of lawful buildings. The site provides a mixture of buildings in terms of scale and size. Furthermore, it is my view that no buildings present on the site are of any particular merit. That is of some relevance having regard to the Council's contention that the proposals under Appeal A would have a negative impact on the existing dwellinghouse. The Council accept that the site is surrounded by mature planting and is well screened from public areas. The proposals outlined by landscape architects, Roger Griffiths Associates, will further enhance the site's attractiveness and will be in line with the objectives of Policy NE10. In view of the above reasons, I therefore consider that the proposals fully accord with both Policies BE1 and NE5.

5.5 In regard to the requirements of Policy T5, the evidence provided within the statement prepared by Mike Cullington (Pick Everard) concludes that, whilst the proposed development would lead to some increase in vehicle movements at the site access junction with Overton Road and the Overton Road/A447 junction, the overall increase would be small and both junctions would be upgraded. I therefore consider that the proposals under Appeal A and B accord with Policy T5.

5.6 Turning to the issue of the impact of the appeal proposals in terms of noise and disturbance, the assessment provided within the proof of evidence of Les Jephson concludes that none of the three appeal proposals would give rise to any noticeable increases in noise levels at surrounding properties and as such are considered acceptable in noise

terms. I therefore conclude on the issue of noise and disturbance that all three appeals accord with Policy BE1.

5.7 The enhancement of the tourist industry is supported within the RES, the regional tourist strategy and recognised within the EMRP. In taking the regional strategies forward, the Council have recognised the benefits of local tourist attractions and accommodation together with the contribution this can make to the local economy. This is reinforced by the existence of the Hinckley and Bosworth Tourism Partnership. The Council have recognised the need for further accommodation in the Borough, in particular to cater for events for example at Donnington and Mallory Park. It is important that visitors to the area are provided with a choice of type and price of accommodation.

5.8 The appeal proposals are supported by LeicesterShire Promotions, the main body responsible for identifying and prioritising tourism development within the county. It is the view of their Director of Tourism that the appeal proposals do have the potential to reinforce the tourism offer within the Hinckley and Bosworth destination area, further enhancing and adding to the 'attract and disperse' strategy, by which visitors would remain longer and increase their spending within the area, thus enhancing the local economy.

5.9 Pinewood Lodge is a popular destination by virtue of the facilities provided. There is adequate infrastructure capacity to cater for the proposed development and as indicated in the previous section, the environment would not be harmed. The additional accommodation together with the enhanced facilities would improve the quality of facilities and services on offer at Pinewood Lodge Holiday Village and would assist in securing the viability of the business.

5.10 The covering letter to the application set out why the tourist accommodation is required. Details of the nearest similar accommodation are provided in **Appendix 12**. In light of the above there is justification for the level of accommodation proposed.

5.11 I consider the proposed development fully accords with relevant plan policies and with national planning guidance. Accordingly I respectfully request that the appeals be allowed subject to the imposition of appropriate conditions. A suggested list is provided in **Appendix 15**.

**LIST OF APPENDICES (bound separately)**

1. PHOTOGRAPHS OF SITE

2. SITE CONTEXT PLAN

3. COMMITTEE REPORT RELATING TO APPLICATION NO: 98/00764/COU

4. EXTRACT FROM COUNCIL'S PROOF OF EVIDENCE IN RESPECT OF ENFORCEMENT APPEALS (APP/K2420/C/05/2004569 AND APP/K2420/C/05/2004570)

5. POLICY REC28 OF DEPOSIT VERSION HINCKLEY AND BOSWORTH LOCAL PLAN

6. ANNEX A FROM GOOD PRACTICE GUIDE ON PLANNING FOR TOURISM

7. EXTRACTS FROM THE EMRP

8. POLICIES T5, NE10 AND REC21 OF THE ADOPTED HINCKLEY AND BOSWORTH LOCAL PLAN

9. HINCKLEY AND BOSWORTH PROMOTIONS ANNUAL REPORT 07/08

10. MINUTES OF HINCKLEY AND BOSWORTH COUNCIL'S SCRUTINY COMMISSION MEETING HELD ON 1 MAY 2008

11. LETTER DATED 24 MARCH 2009 FROM DIRECTOR OF TOURISM, LEICESTERSHIRE PROMOTIONS

12. EXISTING TOURIST ACCOMMODATION PLAN

13. EXISTING LANDSCAPE FEATURE PLAN (DRAWING NO: PIN1/E/01)

14. LANDSCAPE PROPOSALS (DRAWING NO: PIN1/E/02)

15. LIST OF SUGGESTED PLANNING CONDITIONS

# 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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**Plans and Appendices**

**Plans**


Plan 1: Common Farm Site Layout
Plan 2: Site Layout Permission Ref No: 05/00197.FUL: Drawing No: 04/107/05B

**Appendices**

Appendix 1 Aerial photograph of the Manor Farm complex prior to restoration

Appendix 2: Structural Inspection Report, Common Farm, August 2005

Appendix 3: Site Photographs

Appendix 4: Drawing No. 5960D-100 Wall Area Schedule

Appendix 5 Planning Application and Committee Report, Ref: 08/00414/FUL

Appendix 6: Committee Report re Farmhouse at Hollywell Farm, Ratby, Ref: 07/00868/FUL

Appendix 7: Opinion of Gregory Jones of Counsel re Hollywell Farm, Ref: 07/00868/FUL

Appendix 8: Appeal Decision re Meadow View, Lychgate Lane, Burbage, Ref: APP/K2420/A/07/2056141

Appendix 9: Planning Application (Ref: AVA/2006/086), Appeal Decision (Ref: APP/M1005/C/07/2066141 and High Court Judgment re Coddington Farm, Whatstandwell, Matlock.

Appendix 10: Appeal Decision re The Haybarn, Mount Farm, Hopton, Staffordshire, Ref: APP/Y3425/C/06/2005797 & 2005806 & 2012607 & 2012602

## 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 RES5 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 adopted 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.

# MARRONS

10 JUN 2009

1, Meridian South, Meridian Business Park, Leicester LE19 1WY.
Tel: 0116 289 2200 Fax: 0116 289 3733 DX 710910 Leicester Meridian. www.marrons.net

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

RECEIVED
03 JUN 2009
SCREENING AND
SCOPING TEAM

**BY E-MAIL AND POST:** **TeamP2@pins.gsi.gov.uk**

02 June 2009

Our Ref: LAC SJS 3323-3-8
Your Ref:

Dear Sirs

**TOWN AND COUNTRY PLANNING ACT 1990**
**APPEALS BY TRAFFORD KNITWEAR LIMITED**
**SITE AT COMMON FARM BARTON ROAD CARLTON**
**APPEAL REFERENCE NO: APP/K2420/A/09/2099681/NWF and APP/K2420/A/09/2101955/NWF**

We refer to the above and to your recent letter.

We confirm that there will be one witness appearing on behalf of the appellant and that is David Prichard, Director of Town Planning at Marrons.

We confirm that in terms of timings, we anticipate the following:

- Opening submissions – 10 to 15 minutes
- Examination in chief – 1 hour
- Cross examination of HBBC witnesses – 1 hour 30 minutes to 1 hour 45 minutes
- Closing submissions – 30 to 45 minutes

We trust the above is useful and that you will contact Louise Cotter of this office if any queries arise.

Yours faithfully

Marrons

**MARRONS**

DEVELOPMENT SERVICES
10 JUN 2009
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PARTNERS: Peter Marron Ltd, Kevin Sumner Ltd, John Edmond Ltd, Simon Stanion Ltd, Nicholas Robinson Ltd, Morag Thomson Ltd, Louise Mee Ltd
ASSOCIATES: Phillip Partridge (Legal Executive), Emma Tattersdill, Justin Price-Jones
PRINCIPAL TOWN PLANNER: David Prichard
The partners are corporate partners wholly owned by solicitors and the firm is regulated by the Solicitors Regulation Authority
Lexcel approved

# GRAHAM WRAGG

## TOWN AND COUNTRY PLANNING ACT 1990

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

## APPENDICES TO 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**

DEVELOPMENT SERVICES

10 JUN 2009

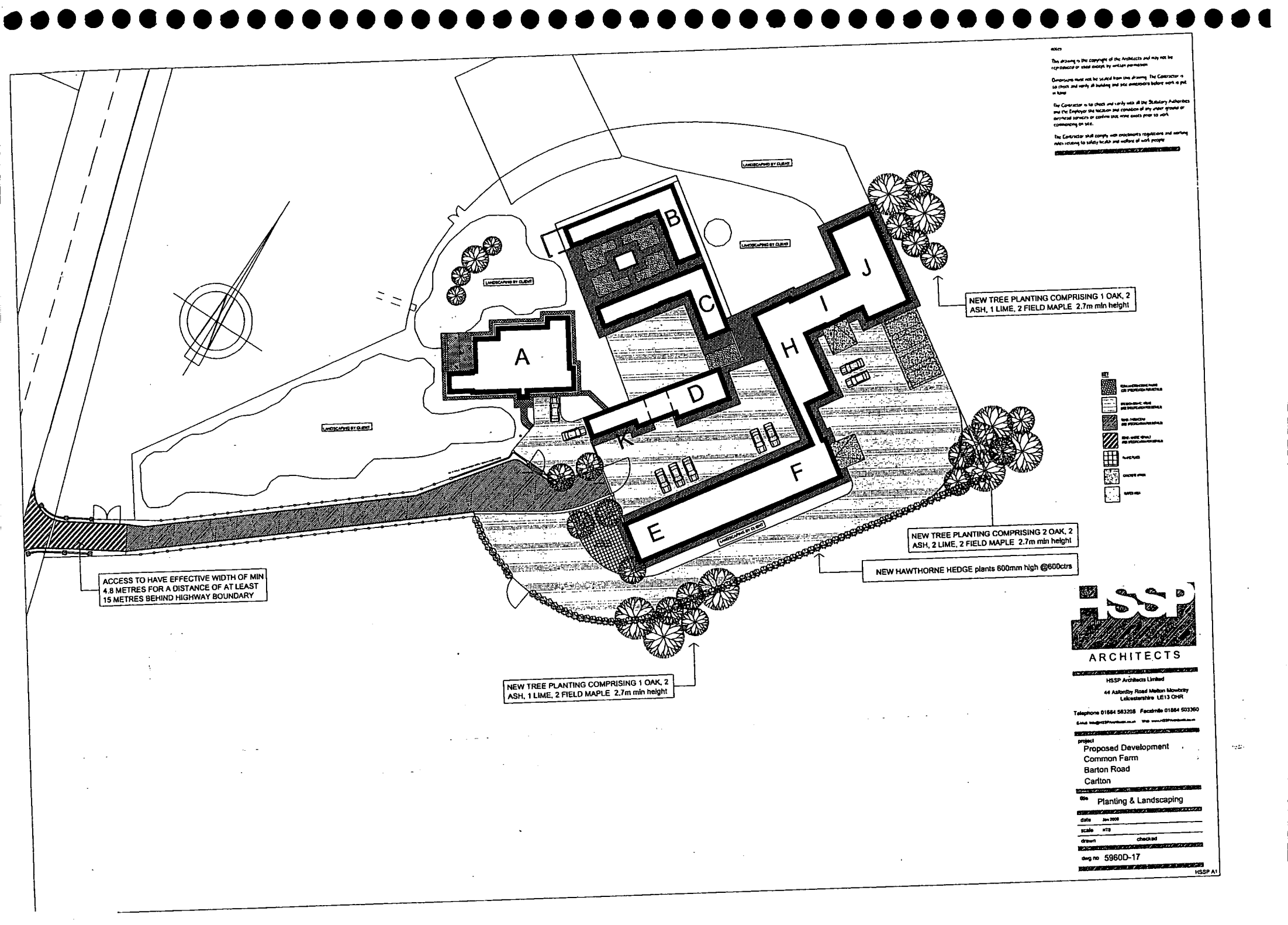
RECEIVED

**Marrons**
**1 Meridian South**
**Meridian Business Park**
**Leicester**
**LE19 1WY**

**Tel: 0116 289 2200**
**Fax: 0116 289 3733**
**Ref: 3323-3-8**

# PLAN 1

# COMMON FARM SITE LAYOUT




notes

This drawing is the copyright of the Architects and may not be reproduced or used except by written permission

Dimensions must not be scaled from this drawing. The Contractor is to check and verify all building and site dimensions before work is put in hand

The Contractor is to check and verify with all the Statutory Authorities and the Employer the location and condition of any under ground or overhead services or confirm that none exists prior to work commencing on site.

The Contractor shall comply with enactments regulations and working rules relating to safety health and welfare of work people

HSSP

ARCHITECTS

HSSP Architects Limited
44 Ashby Road Melton Mowbray
Leicestershire LE13 0HR
Telephone 01664 563208 Facsimile 01664 503360

project
Proposed Development
Common Farm
Barton Road
Carlton

title Planting & Landscaping

date Jan 2009
scale NTS
drawn checked

dwg no 5960D-17

HSSP A1

# PLAN 2

## SITE LAYOUT PERMISSION
## REF NO: 05/00197.FUL: DRAWING NO: 04/10705B

# APPENDIX 1

# AERIAL PHOTOGRAPH OF THE MANOR FARM COMPLEX PRIOR TO RESTORATION


Barton Rd
© 2009 Europa Technologies
© 2009 Tele Atlas
© 2009 Infoterra Ltd & Bluesky
52°38'21.45" N 1°24'19.70" W
elev 105 m
Jul 3, 2006
Eye alt 371 m
Google

# APPENDIX 2

# STRUCTURAL INSPECTION REPORT

# COMMON FARM, AUGUST 2005

jms CIVIL & STRUCTURAL CONSULTING ENGINEERS

Structural and Civil Engineering Project Management Planning Supervisor Surveying Structural Inspections

Ref : DJS/NM/CO05/438/08

Date : 30 August 2005

Structural Inspection Report

On Behalf Of

Mr & Mrs Thompson

Common Farm

Barton Road

Carlton

Nuneaton

CV13 0RL

COPY

Structural Inspection

**Common Farm**

Barton Road

Carlton Nuneaton

CV13 0RL


◉ 114D Abbey Street, Nuneaton, Warwickshire CV11 5BX
○ Unit 2 Pegasus, Orion Court, Great Blakenham, Ipswich, Suffolk IP6 0RL
○ Unit 7 Deben Mill, Old Maltings Approach, Woodbridge, Suffolk IP12 1BL
○ 20 Church Street, Ringstead, Northamptonshire, NN14 4DH

Tel: 02476 350505 Fax: 02476 350040
Tel: 01473 834060 Fax: 01473 834060
Tel: 01394 610234 Fax: 01394 610243
Tel/Fax: 01933 624246
Web: www.jmsengineers.co.uk



Registered Office, Post Office House, 100 Long Street, Atherstone, Warwickshire CV9 1AP Registered No. 2413753-England



12-AUG-2008 09:55 FROM PLANNING TO 01664503360 P.02

# STRUCTURAL INSPECTION REPORT

**Site** : Common Farm Barton Road Carlton Nuneaton CV13 0RL

**Client** : Mr & Mrs Thompson Common Farm Barton Road Carlton Nuneaton CV13 ORL

**Date** : 30 August 2005

## Brief

1.0 In accordance with your instructions we visited the above site in order to carry out a structural inspection of the barns and identify their overall structural integrity.

2.0 We visited the site on the afternoon of Thursday 18 August 2005, which was a dry day following a period of generally unsettled weather conditions.

3.0 This report is issued subject to our standard limitations of inspection, attached as Appendix 'A'.

5 / 4 / 3 / 1 2

Barn 1.

## Observations

4.0 There are five barns being considered with Barn 1 standing on its own. Barns 3, 4 and 5 stand in a 'U' shape around a covered courtyard whilst Barn 2 forms a spur off the corner of Barn 3/4.

5.0 All of the barns are primarily of load bearing masonry supporting tiled roofs over and, although they generally maintain their original shape/structure, all the barns have received modifications/alterations during their working life.



12-AUG-2008 09:55 FROM PLANNING TO 01664503360 P.02

**Barn 1**

6.0 This consists of three linked buildings, stepped both vertically and along the front elevation. The right hand end, (when viewed from the front), has a hay loft set within the roof void whilst the ground floor is currently being used for light industry purposes.

7.0 The building is generally free from significant structural defect although the roof structure will require some minor remedial work to ensure its long-term integrity.

8.0 Ivy growth over the left hand gable wall has led to some disturbance of the masonry and displacement of the tiles and ingress of water. This ivy should be cut back and repairs carried out to prevent further distress arising.

**Barn 2**

9.0 This is a tall, threshing type barn, with internal buttressing walls. It has been extended to one end which has a large opening.

10.0 Original stone walls/foundations are visible up to approximately 600mm above ground level with the brickwork walls built off these. This stonework would indicate that the barn has shallow foundations.

11.0 The internal buttressing walls are in a fragile state with various holes etc having been taken through. Subsequently, these will need repairing/reinforcing to ensure their future stability is maintained and that they continue to buttress the external walls.

12.0 It would appear that a first floor was originally present to the rear of the barn and this would have provided a significant degree of additional robustness to the building. We assume that any future use of the barn will incorporate a first floor and this should be tied to the existing walls to provide additional stability.



12-AUG-2008 09:55 FROM PLANNING TO 01664503560 P.04

13.0 The gable wall to the rear of the building, (where it abuts Barn 4), leans into the building. Access to this level was not available during our inspection but we consider it likely that some rebuilding will be required in this area.

14.0 The wall to the rear also leans/bulges outwards at approximately midway along its length and this will require additional buttressing and/or tying in to any new structure to restore its integrity.

15.0 The roof structure is formed by rafters spanning between purlins which in turn are supported by walls or timber trusses. The roof will need stripping off and the introduction of additional structural ties/supports will be required to prevent further eaves spread occurring.

**Barn 3**

16.0 This is a low level barn with internal cow stalls. The roof is of low quality construction and in a poor condition.

17.0 Although the building is generally is a stable condition we would recommend that wholesale replacement of the roof is considered as this is likely to prove to be more economically viable than repairing and strengthening the existing. This would also allow the introduction of suitable eaves restraint which would be beneficial to the front elevation which has several openings.

18.0 The cow stalls and floor are of insitu concrete and will require removing as part of any conversion work. Such work should be carefully carried out as heavy "jack hammering" will dislodge the roof and/or walls.



12-AUG-2008 09:56 FROM PLANNING TO 01664503360 P.05

**Barn 4**

19.0 This barn is generally is a sound structural condition with no significant structural defects.

20.0 The covered courtyard and positioning of Barns 2 and 5 have provided protection from the elements and its use as a tack room or similar has limited its structural abuse.

**Barn 5**

21.0 This barn is of more recent construction than the others and is robustly built with six internal buttressing walls.

22.0 Slight weathering has occurred to the rear masonry wall but not to a degree where structural distress has arisen.

23.0 Although a lightweight sheeted roof is currently in position we consider it likely that this could readily be replaced with a tiled roof without detriment to the supporting structure.

**Conclusions/Recommendations**

24.0 The barns are generally in a sound structural condition with the expected deterioration from the weather elements and their agricultural use.

25.0 Their conversion/modernisation will not need significant structural alterations nor enhancements assuming suitable consideration is given to the design and specification.

26.0 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



12-AUG-2008 09:56 FROM PLANNING TO 01664503360 P.06

introduction of necessary strapping and the utilisation of the existing buttresses will restore its long-term stability.

27.0 Where first floors are to be introduced, we recommend that these are supported of new walls and piers so that the equilibrium of the existing foundations is not disturbed.

28.0 Before any works are undertaken on the barns we would advise that suitable inspections are undertaken to determine the degree of any timber infestation. Similarly, an asbestos survey should be carried out.

For and on behalf of
**JMS CONSULTING ENGINEERS LTD**



**D J Staines BEng(Hons) CEng MIStructE FConsE**



12-AUG-2008 09:56 FROM PLANNING TO 01664503360 P.07

CO05/438/08
Common Farm, Barton Road Carlton

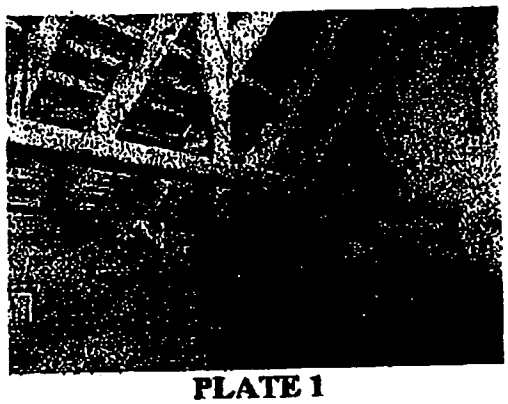


**PLATE 1**

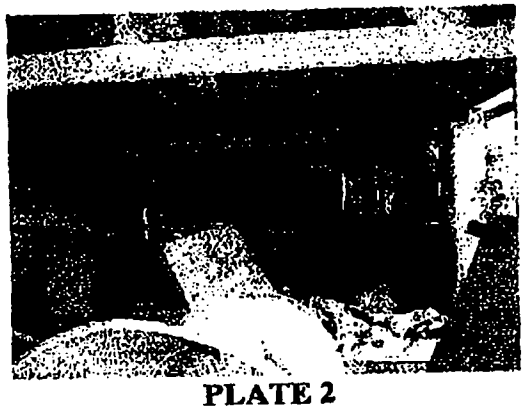


**PLATE 2**

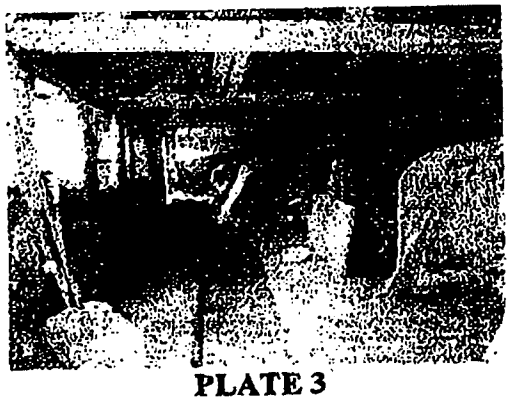


**PLATE 3**

CO05/438/08
Common Farm, Barton Road Carlton

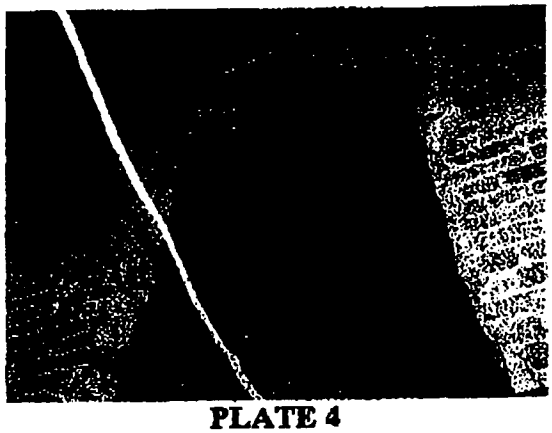


PLATE 4



PLATE 5



PLATE 6

CO05/438/08
Common Farm, Barton Road Carlton



**PLATE 7**



**PLATE 8**

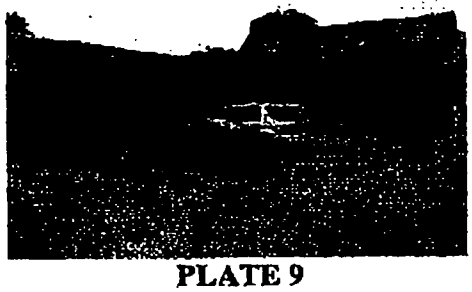


**PLATE 9**

CO05/438/08
Common Farm, Barton Road Carlton

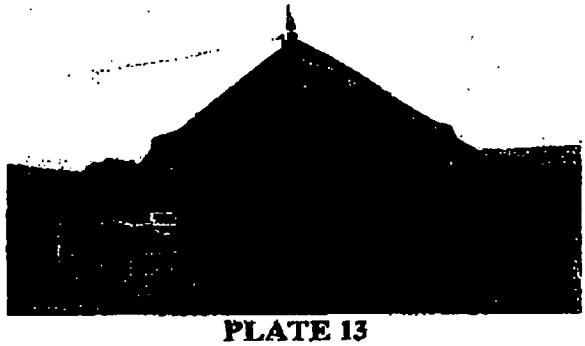


PLATE 13



PLATE 14

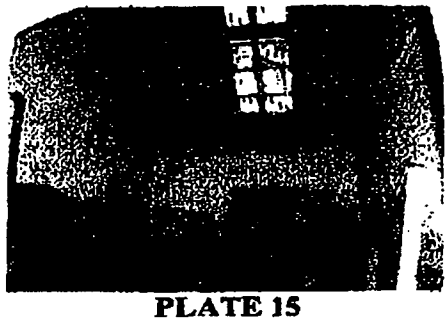


PLATE 15

# APPENDIX 'A'

1.0 During our inspection of the premises as presently existing, which is normally carried out in a single visit, we shall check all visible exposed and accessible elements of construction in order to identify defects and shortcomings which are likely to adversely affect the use of the property or give rise to expenditure in the foreseeable future. We shall consider the condition and durability of the building fabric in relation to the type and age of the property, the need for repairs or special maintenance and, where appropriate, comment on the suitability of the structure for its proposed use.

2.0 We shall, where possible, lift loose laid floor coverings and inspect cellars and roof voids where appropriate, but we shall not empty the contents of any fitted cupboards, move heavy furniture or lift carpets or floorboards and our report specifically excludes all covered, and unexposed or inaccessible areas and buried elements of construction such as foundations and built-in steels and timbers. Apart from any balconies and roofs to which external access may be available, our external inspection will be carried out from ground level. Unless requested otherwise the main building shall be the form of this report.

In accordance with our professional indemnity insurance cover we have to state that "we have not inspected woodwork or other parts of the structure which are covered unexposed or inaccessible and we are therefore, unable to report any such part of the property is free from defect."

3.0 We will not arrange for exposure works to be carried out to the superstructure or below ground, or carry out tests for high alumina cement concrete, calcium chloride, asbestos or the use of woodwool slabs as permanent shuttering, but where appropriate, will seek further instructions for these to be carried out for an additional charge.

4.0 With regard to service installations, incoming mains, waste and drains, we shall report on any matters that come to light during the course of our inspection as requiring further investigation by specialists, but we shall not arrange for tests to be carried out unless specifically instructed.

5.0 Although where appropriate, we will be happy to examine any lease or title documents, planning or any other consents or fire certificates which are made available to us prior to our inspection, we shall assume in such cases that solicitors will be advising in detail upon these matters and that they will also check on the responsibility for the maintenance of all boundaries and rights of way and the existence of any easements or necessary rights of light, drainage etc.

6.0 We require to be informed, prior to the undertaking of any excavation or boring work, of the positions of any underground services or plant beneath the site. Whilst reasonable care will be taken during the execution of field work we cannot accept liability, either direct or consequential, for the damage to any service not clearly identified to us.

7.0 Our written report will be addressed and forwarded to the aforementioned Client. Any liability which may arise from its contents will be specifically restricted to the Client.



12-AUG-2008 09:57 FROM PLANNING TO 01664503360 P.13

# APPENDIX 3

# SITE PHOTOGRAPHS

# APPENDIX 4

## DRAWING NO: 5960D-100
## WALL AREA SCHEDULE

# APPENDIX 5

# PLANNING APPLICATION AND COMMITTEE REPORT, REF: 08/00414/FUL

DEVELOPMENT SERVICES

16 APR 2008

RECEIVED

# Application for Planning Permission.
## Town and Country Planning Act 1990

Publication of planning applications on council web sites
Please note that with the exception of applicant contact details and Certificates of Ownership, the information provided on this application form and in supporting documents may be published on the council's website.
If any other information that is provided as part of the application which falls within the definition of personal data under the Data Protection Act and is not to be published on the council's website, please contact the council's planning department.

## 1. Applicant Name, Address and Contact Details

Title: Mr | First name: Graham | Surname: Wragg

Company name:

Street address: Common Farm, Barton Road, Carlton

Town/City: Nuneaton

County: Warwickshire

Country: England

Postcode: CV13 0RL

| | Country Code | National Number | Extension Number |
|---|---|---|---|
| Telephone number: | | | |
| Mobile number: | | | |
| Fax number: | | | |

Email address:

Are you an agent acting on behalf of the applicant? (•) Yes ( ) No

## 2. Agent Name, Address and Contact Details

Title: Mr | First Name: James | Surname: Botterill

Company name: HSSP Architects Limited

Street address: 44, Asfordby Road

Town/City: Melton Mowbray

County: Leicestershire

Country: UK

Postcode: LE13 0HR

| | Country Code | National Number | Extension Number |
|---|---|---|---|
| Telephone number: | 01664 | 563288 | |
| Mobile number: | 07796 | 306224 | |
| Fax number: | 01664 | 503360 | |

Email address: info@hssparchitects.co.uk

## 3. Description of the Proposal

Please describe the proposed development including any change of use:

Removal of Remaining External Walls from Previous Planning Approval - reference 07/00324/FUL and erection of new dwelling.

Has the building, work or change of use already started? ( ) Yes (•) No

## 4. Site Address Details

Full postal address of the site (including full postcode where available)

House: | Suffix:

House name: Common Farm

Street address: Barton Road

Carlton

Town/City: NUNEATON

County:

Postcode: CV13 0RL

Description of location or a grid reference
(must be completed if postcode is not known):

Easting: 440313

Northing: 304770

Description:

## 5. Pre-application Advice

Has assistance or prior advice been sought from the local authority about this application? ○ Yes ◉ No

## 6. Pedestrian and Vehicle Access, Roads and Rights of Way

Is a new or altered vehicle access proposed to or from the public highway? ○ Yes ◉ No

Is a new or altered pedestrian access proposed to or from the public highway? ○ Yes ◉ No

Are there any new public roads to be provided within the site? ○ Yes ◉ No

Are there any new public rights of way to be provided within or adjacent to the site? ○ Yes ◉ No

Do the proposals require any diversions/extinguishments and/or creation of rights of way? ○ Yes ◉ No

## 7. Waste Storage and Collection

Do the plans incorporate areas to store and aid the collection of waste? ○ Yes ◉ No

Have arrangements been made for the separate storage and collection of recyclable waste? ○ Yes ◉ No

## 8. Neighbour and Community Consultation

Have you consulted your neighbours or the local community about the proposal? ○ Yes ◉ No

## 9. Neighbour and Community Consultation

Is the applicant or agent related to any member of staff or elected member of the council? ○ Yes ◉ No

## 10. Materials

Please state what materials (including type, colour and name) are to be used externally (if applicable):

**Walls - description:**

Description of *existing* materials and finishes:

Brickwork painted /rendered

Description of *proposed* materials and finishes:

Blockwork rendered to match existing farmhouse, facing brickwork to rear.

**Roof - description:**

Description of *existing* materials and finishes:

concrete roof tiles

Description of *proposed* materials and finishes:

Welsh slates

**Windows - description:**

Description of *existing* materials and finishes:

white upvc

Description of *proposed* materials and finishes:

oak

## 10. Materials (continued)

**Doors - description:**

Description of *existing* materials and finishes:

white upvc

Description of *proposed* materials and finishes:

oak

**Boundary treatments - description:**

Description of *existing* materials and finishes:

Wire fence

Description of *proposed* materials and finishes:

timber post and rail

**Vehicle access and hard standing - description:**

Description of *existing* materials and finishes:

gravel

Description of *proposed* materials and finishes:

Block paving and gravel

**Lighting - add description**

Description of *existing* materials and finishes:

Description of *proposed* materials and finishes:

to be agreed

Are you supplying additional information on submitted plan(s)/drawing(s)/design and access statement? (•) Yes ( ) No

If Yes, please state references for the plan(s)/drawing(s)/design and access statement:

5960P-10,11 and 12
Deisgn and access statement
Location plan

## 11. Vehicle Parking

Please provide information on the existing and proposed number of on-site parking spaces:

| Type of vehicle | Existing number of spaces | Total proposed (including spaces retained) | Difference in spaces |
|---|---|---|---|
| Cars | 3 | 3 | 0 |

## 12. Foul Sewage

Please state how foul sewage is to be disposed of:

Mains sewer ☐ Package treatment plant ☐ Unknown ☐

Septic tank ☒ Cess pit ☐

Other

Are you proposing to connect to the existing drainage system? (•) Yes ( ) No ( ) Unknown

If Yes, please include the details of the existing system on the application drawings and state references for the plan(s)/drawing(s):

5960P-12

## 13. Assessment of Flood Risk

Is the site within an area at risk of flooding? Refer to the Environment Agency's Flood Map showing flood zones 2 and 3 and consult Environment Agency standing advice and your local planning authority requirements for information as necessary. ( ) Yes (•) No

If Yes, you will need to submit an appropriate flood risk assessment to consider the risk to the proposed site.

Is your proposal within 20 metres of a watercourse (e.g. river, stream or beck)? ( ) Yes (•) No

Will the proposal increase the flood risk elsewhere? ( ) Yes (•) No

How will surface water be disposed of?

☐ Sustainable drainage system ☐ Main sewer ☐ Pond/lake

☐ Soakaway ☒ Existing watercourse

## 14. Biodiversity and Geological Conservation

Is there a reasonable likelihood of the following being affected adversely or conserved and enhanced within the application site, OR on land adjacent to or near the application site:

a) Protected and priority species

○ Yes, on the development site ○ Yes, on land adjacent to or near the proposed development ◉ No

b) Designated sites, important habitats or other biodiversity features

○ Yes, on the development site ○ Yes, on land adjacent to or near the proposed development ◉ No

c) Features of geological conservation importance

○ Yes, on the development site ○ Yes, on land adjacent to or near the proposed development ◉ No

## 15. Existing Use

Please describe the current use of the site:

Domestic

Is the site currently vacant? ○ Yes ◉ No

Does the proposal involve any of the following:

Land which is known to be contaminated? ○ Yes ◉ No

Land where contamination is suspected for all or part of the site? ○ Yes ◉ No

A proposed use that would be particularly vulnerable to the presence of contamination? ○ Yes ◉ No

**Application advice**
If you have said Yes to any of the above, you will need to submit an appropriate contamination assessment.

## 16. Trees and Hedges

Are there trees or hedges on the proposed development site? ◉ Yes ○ No

And/or: Are there trees or hedges on land adjacent to the proposed development site that could influence the development or might be important as part of the local landscape character? ○ Yes ◉ No

If Yes to either or both of the above, you will need to provide a full Tree Survey with accompanying plan before your application can be determined. Your Local Planning Authority should make clear on its website what the survey should contain, in accordance with the current 'BS5837: Trees in relation to construction - Recommendations'

## 17. Trade Effluent

Does the proposal involve the need to dispose of trade effluents or waste? ○ Yes ◉ No

## 18. Residential Units

Does your proposal include the gain or loss of residential units? ○ Yes ◉ No

## 19. All Types of Development: Non-residential Floorspace

Does your proposal involve the loss or gain of non-residential floorspace? ○ Yes ◉ No ○ Unknown

## 20. Employment

If known, please complete the following information regarding employees:

| | Full-time | Part-time | Equivalent number of full-time |
|---|---|---|---|
| Existing employees | 0 | 0 | 0 |
| Proposed employees | 0 | 0 | 0 |

## 21. Hours of Opening

If known, please state the hours of opening for each non-residential use proposed:

| Use | Monday to Friday Start Time | Monday to Friday End Time | Saturday Start Time | Saturday End Time | Sunday and Bank Holidays Start Time | Sunday and Bank Holidays End Time | Not Known |
|---|---|---|---|---|---|---|---|

## 22. Site Area

What is the site area? 2410 sq.metres

## 23. Industrial or Commercial Processes and Machinery

Please describe the activities and processes which would be carried out on the site and the end products including plant, ventilation or air conditioning. Please include the type of machinery which may be installed on site:

N/A

Is the proposal for a waste management development? ○ Yes ◉ No

## 24. Hazardous Substances

Is any hazardous waste involved in the proposal? ○ Yes ◉ No

## 25. Site Visit

Can the site be seen from a public road, public footpath, bridleway or other public land? ◉ Yes ○ No

If the planning authority needs to make an appointment to carry out a site visit, whom should they contact? (Please select only one)

◉ The agent ○ The applicant ○ Other person

## 26. Certificates (Certificate A)

**Certificate of Ownership - Certificate A**

**Town and Country Planning (General Development Procedure) Order 1995 Certificate under Article 7**

I certify/The applicant certifies that on the day 21 days before the date of this application nobody except myself/ the applicant was the owner (owner is a person with a freehold interest or leasehold interest with at least 7 years left to run) of any part of the land or building to which the application relates.

Title: Mr First name: James Surname: Botterill

Person role: Agent Declaration date: 16/04/2008 ☒ Declaration made

## 26. Certificates (Agricultural Holdings Certificate)

**Agricultural Holding Certificate**

**Town and Country Planning (General Development Procedure) Order 1995 Certificate under Article 7**

Agricultural Land Declaration - You Must Select Either A or B

(A) None of the land to which the application relates is, or is part of an agricultural holding. ◉

(B) I have/The applicant has given the requisite notice to every person other than myself/the applicant who, on the day 21 days before the date of this application, was a tenant of an agricultural holding on all or part of the land to which this application relates, as listed below: ○

Title: Mr First Name: James Surname: Botterill

Person role: Agent Declaration date: 16/04/2008 ☒ Declaration Made

## 27. Declaration

I/we hereby apply for planning permission/consent as described in this form and the accompanying plans/drawings and additional information. ☒

Date 16/04/2008

notes

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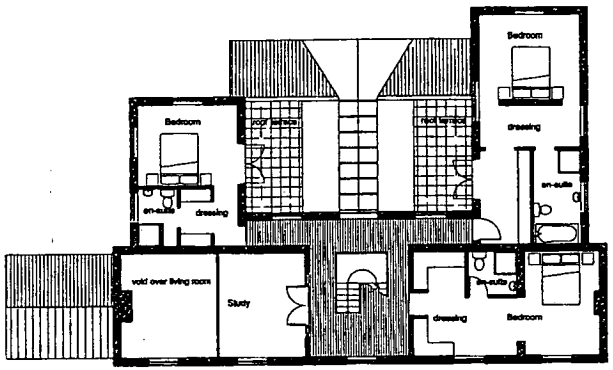
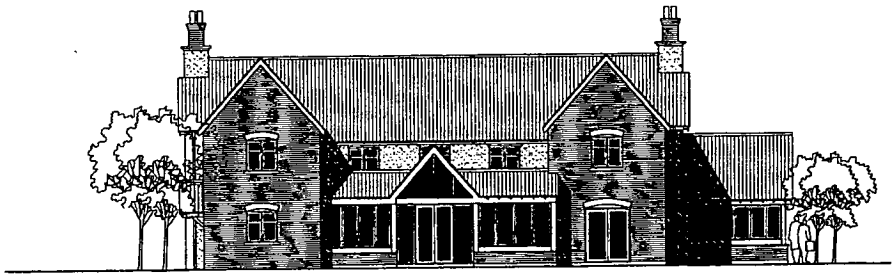
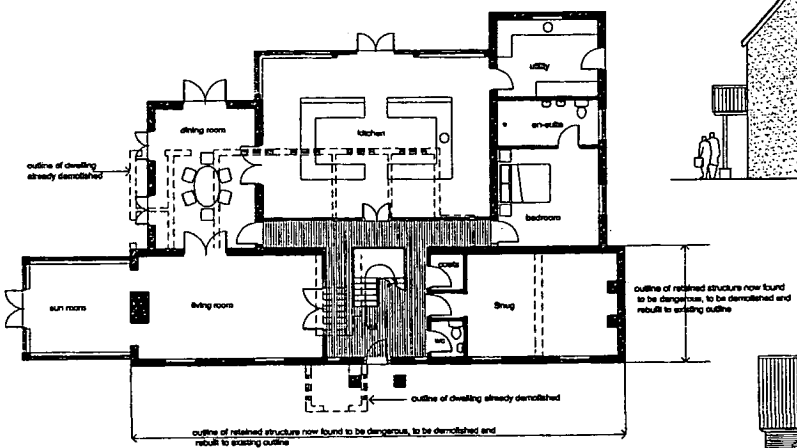


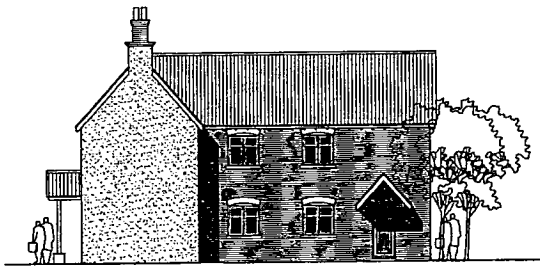



Rear Elevation

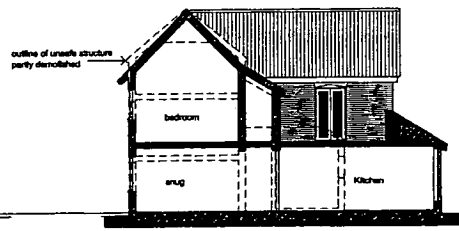


Front Elevation

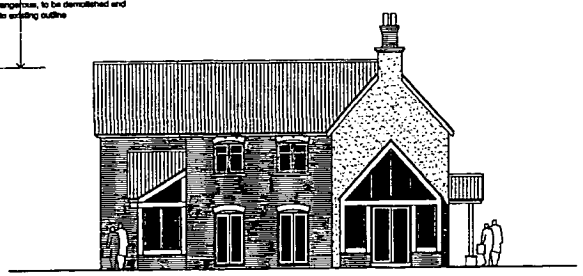


Side Elevation




Section AA



ARCHITECTS

44 Asfordby Road Melton Mowbray
Leicestershire LE13 0HR

Telephone 01664 563288 Facsimile 01664 503360

project

Demolition of existing, and construction of new dwelling, Common Farm, Barton Road Carlton

title

Planning

date

scale

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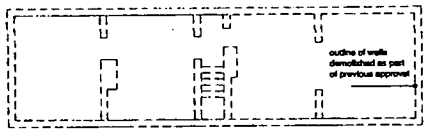


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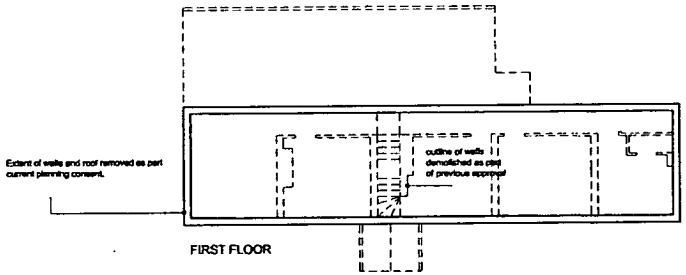
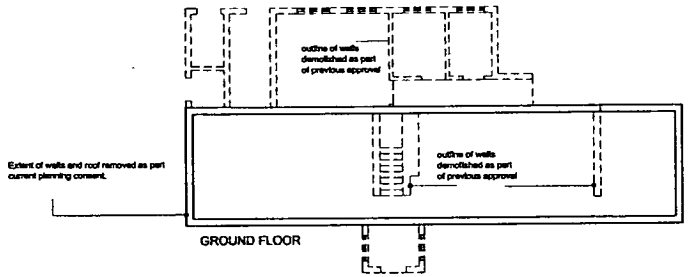
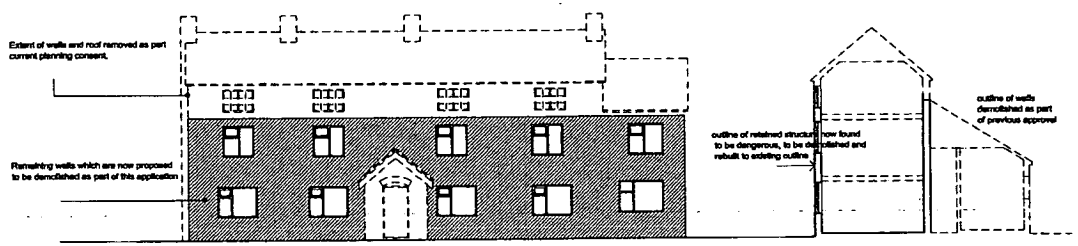



FIRST FLOOR




GROUND FLOOR




ORIGINAL ELEVATION OF DWELLING NOW PARTLY DEMOLISHED

HSSP

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Leicestershire LE13 0HR

Telephone 01664 563286 Facsimile 01664 503360

project

Demolition of existing and construction of new dwelling Common Farm, Barton Road Carlton

title

retained walls to be demolished

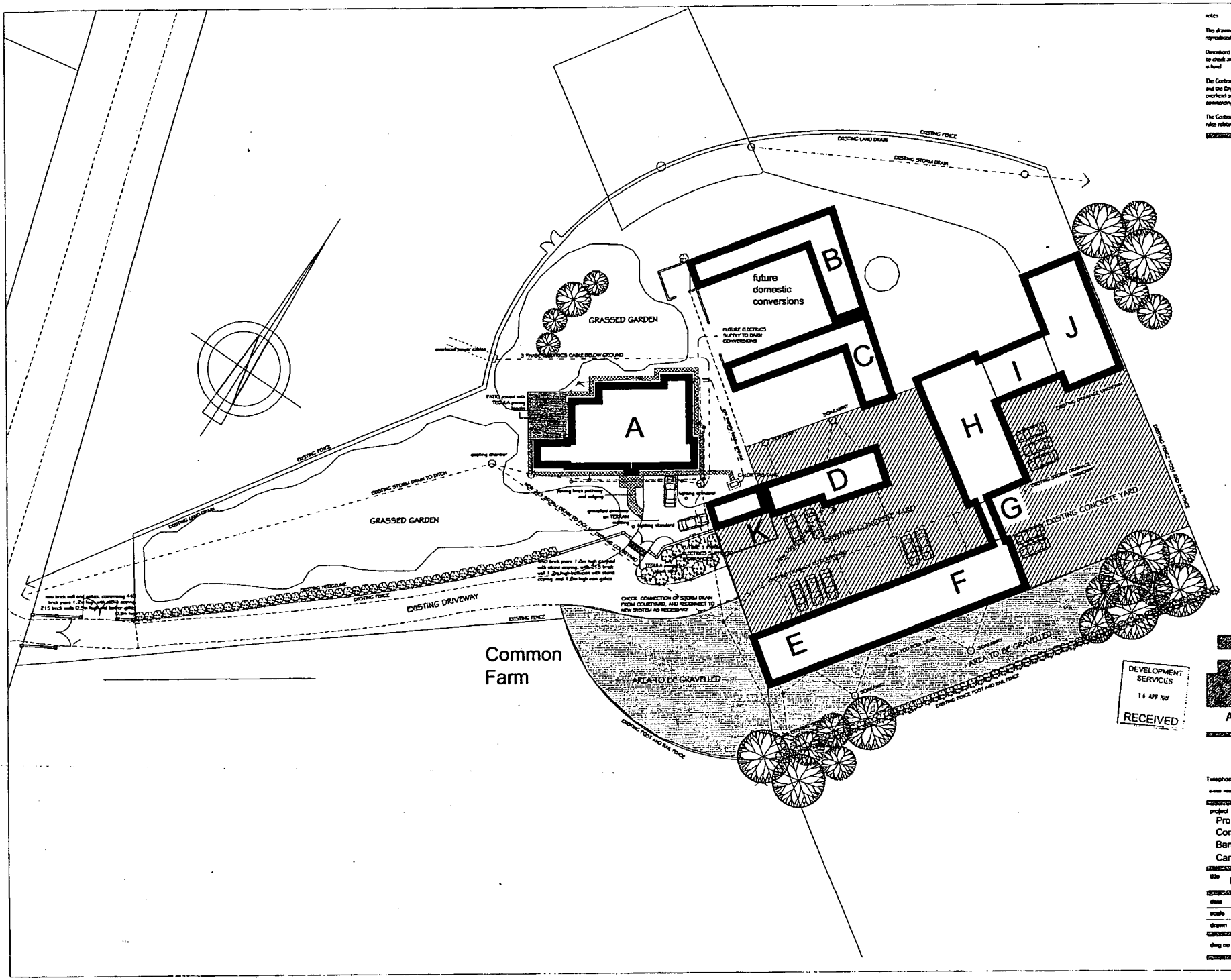
date March 99

scale 1:100

drawn checked

dwg no 5960P-11

HSSP

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HSSP ARCHITECTS

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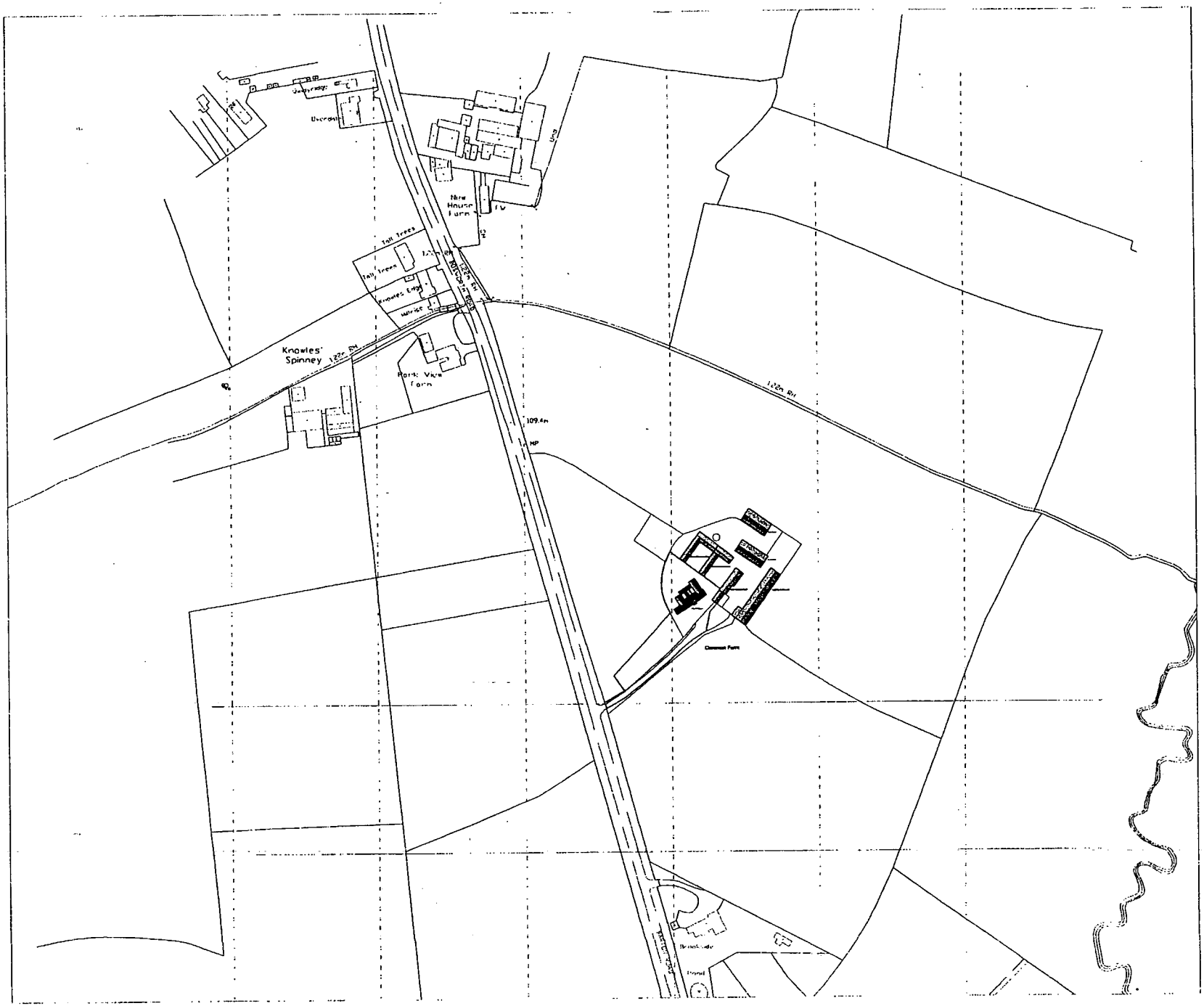
Leicestershire LE13 0NR
Telephone 01664 563288 Facsimile 01664 503360

project
Proposed Development
Common Farm
Barton Road
Carlton

title
Block plan

date March 2008
scale 1:200
drawn checked
dwg no 5960P-12

HSSP A1





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DEVELOPMENT SERVICES

1 F APR 2008

RECEIVED


hipkin sims sanderson partnership

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Leicestershire LE13 0HR

Telephone 01664 563288 Facsimile 01664 503360


project

Proposed development
Common Farm
Barton Road
Carlton

title

Location plan

date April 08

scale 1:1250

drawn checked

dwg no 5960P-13

HSSP A1

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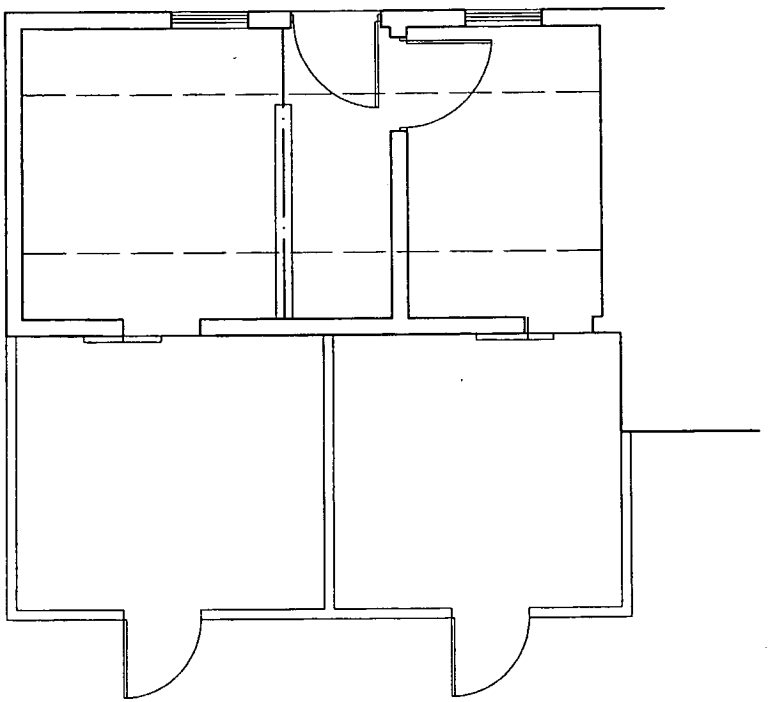

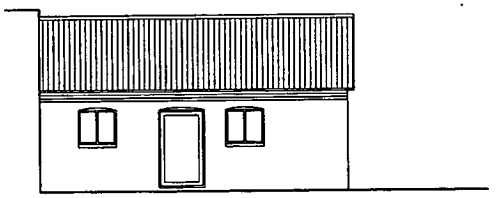

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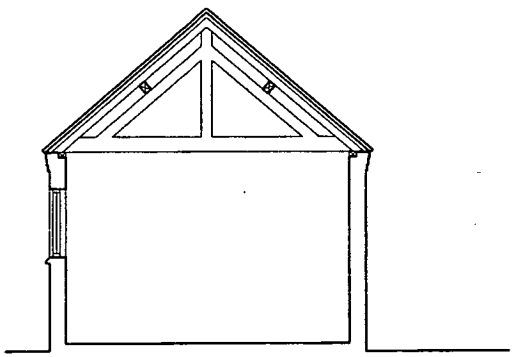

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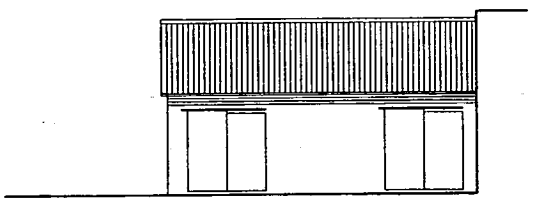
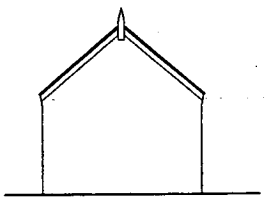


Side elevation



Front elevation

hsp
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project

Proposed development
Common Farm
Carlton

title Survey of existing garage

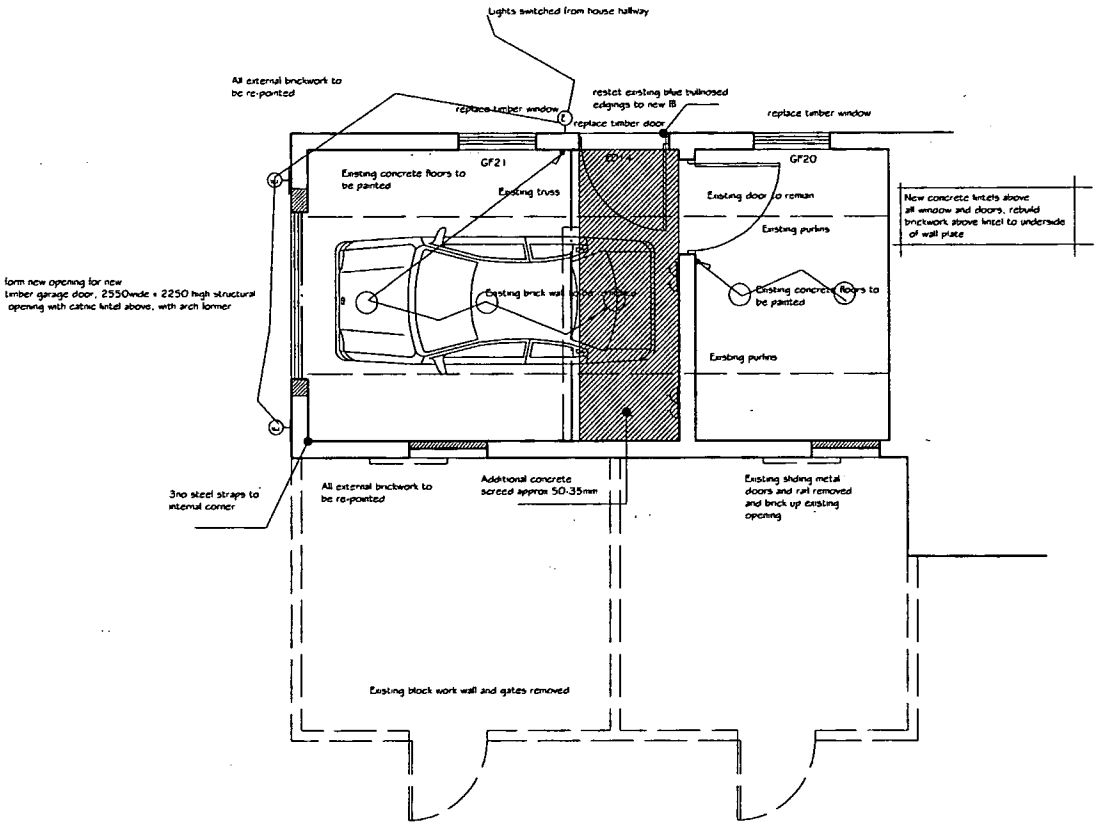
date June 07

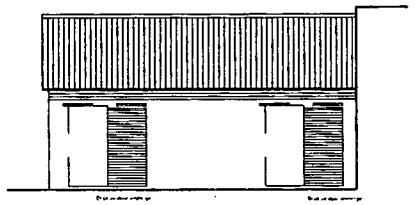
scale 1:100/50

drawn

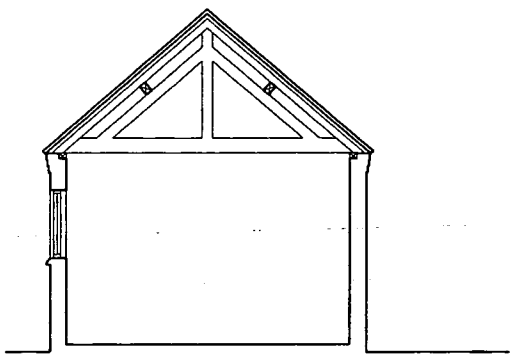
dwg no 5960A-02

HSSP A2



Side elevation



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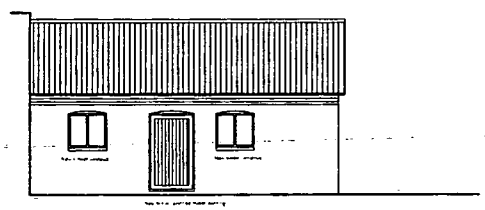
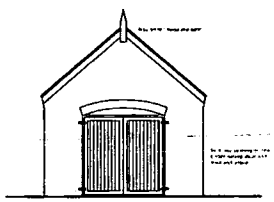


Side elevation



Front elevation

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REV A: 09.04.08: Additional notes connected with AI no.3

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project

Proposed development
Common Farm
Carlton

title Works to existing Garage

date June 07

scale 1:50/100

drawn

dwg no 5960C-K-01A

HSSP A2

Hinckley & Bosworth Borough Council

*A Borough to be proud of*

**Town and Country Planning Act 1990**

**PLANNING PERMISSION**

**Name and Address of Applicant**
Mr Graham Wragg
Common Farm
Barton Road
Carlton
Nuneaton
CV13 0RL

**Name and Address of Agent (if any)**
Mr James Botterill
HSSP Architects Limited
44 Asfordby Road
Melton Mowbray
Leicestershire
LE13 0HR

**Part I - Particulars of Application**

| **Date of Application** | **Application No.** |
|---|---|
| 16 April 2008 | 08/00414/FUL |

**Particulars and location of development :**

REMOVAL OF REMAINING EXTERNAL WALLS FROM PREVIOUS PLANNING APPROVAL-REFERENCE 07/00324/FUL, ERECTION OF NEW DWELLING AND CONVERSION OF OUTBUILDING TO GARAGE

Common Farm Barton Road Carlton Nuneaton Leicestershire

**Part II - Particulars of decision**

SUMMARY OF DECISION - The proposal is in conformity with Policy/Policies BE1, RES5, RES10 and T5 of the Hinckley and Bosworth Local Plan. Planning permission is granted subject to conditions.

**In pursuance of its powers under the Town and Country Planning Act 1990, the Hinckley and Bosworth Borough Council grants permission for the carrying out of the development referred to in Part I hereof in accordance with the application form and plans submitted, subject to the following conditions :-**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

2. Notwithstanding the submitted details, before any development commences, representative samples of the types and colours of materials to be used on the external elevations of the proposed dwelling shall be deposited with and approved in writing by the Local Planning Authority, and the scheme shall be implemented in accordance with those approved materials.

3. This permission relates to the application as endorsed by additional plans No. 5960C-K-01A and 5960C-K-02 received by the Local Planning Authority on the 20th May 2008.

The reasons for the conditions are :-

1. To comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.

2. To ensure that the development has a satisfactory external appearance to accord with policy BE1 of the adopted Hinckley & Bosworth Local Plan.

3. To define the permission.

**Continued...**

IT IS IMPORTANT THAT YOU SHOULD READ THE NOTES ON THE REVERSE SIDE OF THIS FORM

**08/00414/FUL Continuation**

NOTES TO APPLICANT :-

1. Bats, nesting birds, great crested newts and certain other species are protected by law. If any such species are discovered before or during the works the works must be suspended and the local office of Natural England contacted for advice.

2. This permission does not grant approval under the Building Act 1984 and the Building Regulations 2000 (as amended) for which a separate application may be required. You are advised to contact the Building Control Section.

3. As from 6th April 2008 this Authority are charging for the discharge of conditions in accordance with revised fee regulations which came into force on that date. Application forms to discharge conditions and further information can be found on the planning portal web site www.planningportal.gov.uk.

T. M Prowse

Date:- 11 June 2008

**TREVOR PROWSE**
PROPER OFFICER OF THE COUNCIL

Had the committee sought to impose this as a condition, then it would be challengeable as unreasonable. It would therefore be perverse and illogical to grant a condition which is patently unreasonable simply because the applicant requests it. The recommendation is therefore that the application be refused.

**RECOMMENDATION :- REFUSE, for the following reasons :-**

1 It is the opinion of the Local Planning Authority the condition allowing opening hours of 7.30am to 10.30pm for this development was considered acceptable. Therefore the imposition of a further condition reducing the permitted hours of operation without justification in planning terms, is unreasonable and unnecessary. It would be contrary to the guidance contained in Circular 11/95: Use of Conditions in Planning Permission.

**Contact Officer:- Louise Winson Ext 5898**

**Item:** **14**

**Reference:** **08/00414/FUL**

**Applicant:** **Mr Graham Wragg**

**Location:** **Common Farm Barton Road Carlton Nuneaton Leicestershire**

**Proposal:** **REMOVAL OF REMAINING EXTERNAL WALLS FROM PREVIOUS PLANNING APPROVAL- REFERENCE 07/00324/FUL, ERECTION OF NEW DWELLING AND CONVERSION OF OUTBUILDING TO GARAGE**

**Introduction:-**

This is a full application for the demolition of the remaining walls of a property and the erection of a new dwelling at Common Farm, Barton Road, Carlton. The property is the former farmhouse and is bound by a number of outbuildings to the north and east of the property with open fields beyond and to the south and west.

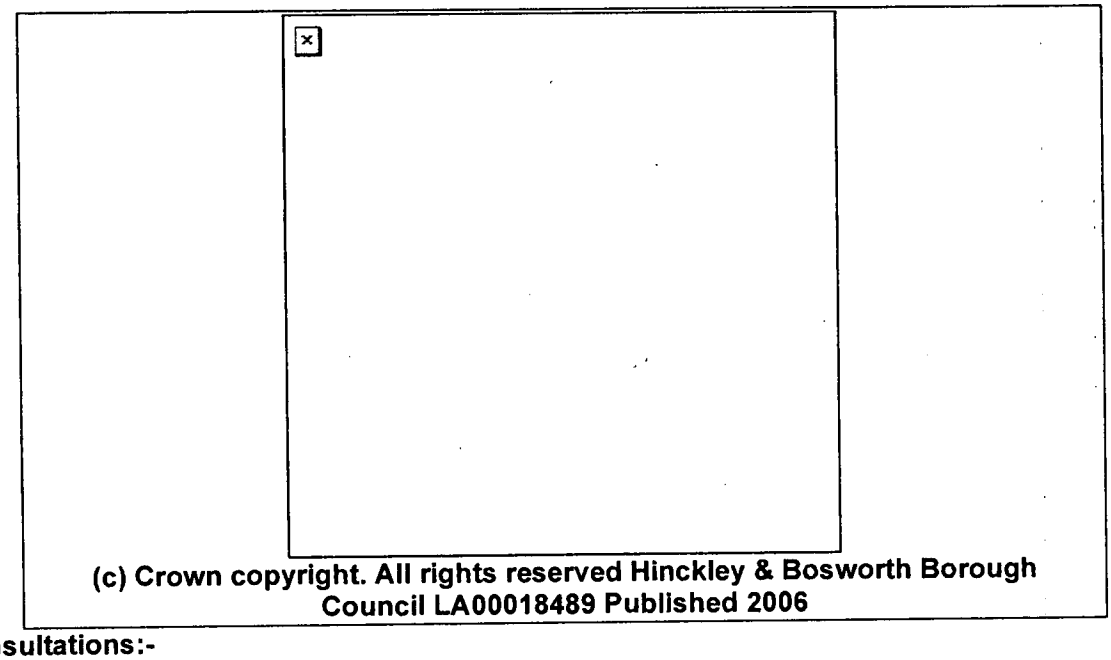
The farmhouse has permission for extensions and alterations which have been commenced (07/00324/FUL). That permission allowed the erection of two two-storey rear projections with a single storey extension between. Work has now ceased on the site as the element of the farmhouse due to be retained has been found to be unsafe. This application seeks to demolish the remainder of the farmhouse and to erect a dwelling of the same design and siting to the permitted extended farmhouse. The application also seeks to use part of an adjacent outbuilding as a garage.

The outbuildings to the east of the application site have permission for conversion and extension for light industrial use (07/00172/FUL) while two 'L' shaped barns to the north of the application site have permission for residential conversion (05/00197/FUL).

The application has been submitted with a design and access statement and a Structural Report. The latter document states that the works required to secure the stability and serviceable lives of the walls cannot be carried out. In the interest of the health and safety of the workforce the report recommends that the walls are taken down and rebuilt off adequate foundations.

**History:-**

| | | | |
|---|---|---|---|
| 07/00324/FUL | Extensions and Alterations to Dwelling | Approved | 03.05.07 |
| 06/01203/FUL | Demolition of Existing Dwelling and Erection of a New Dwelling and Detached Garage | Withdrawn | 15.12.06 |



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**Consultations:-**

No objection has been received from:-

Market Bosworth Society
Head of Community Services (Pollution)
Head of Community Services (Land Drainage)
Director of Highways, Transportation and Waste Management (Highways).

Market Bosworth Parish Council raise no objection but request that a condition be imposed to prevent a retail use to be carried out from the property and that conditions imposed on the previous industrial use application should remain in place.

Director of Community Services (Ecology) does not object to the application but advises that bats and grass snakes have been recorded in the vicinity and recommend that a great crested newt survey should be conducted.

A site notice has been displayed and neighbours notified. At the time of writing this report no comments have been received.

**Development Plan Policies:-**

National Policy

Planning Policy Statement 3 - Housing, encourages the use of previously developed land within urban areas in preference to the development of greenfield sites for housing. This statement sets out 30 dwellings per hectare as the national indicative minimum. The Policy states that good design is fundamental to the development of high quality new housing, which contributes to the creation of sustainable, mixed communities.

Planning Policy Statement 7 - Sustainable Development in Rural Areas sets out national policies which apply to rural areas, including country towns and villages and the wider, largely undeveloped countryside up to the fringes of larger urban areas. This states that Local Planning Authorities should strictly control new housebuilding (including single dwellings) in the countryside, away from established settlements or from areas allocated for housing in development plans.

Local Plan

The site lies outside the settlement boundaries for Market Bosworth and Carlton as identified in the adopted Hinckley and Bosworth Local Plan.

Policy RES5 of the adopted Hinckley and Bosworth Local Plan assesses proposals for residential development on unallocated sites. Planning permission will only be granted if the site lies within the boundaries of an urban area or rural settlement and the siting, design and layout of the proposal do not conflict with relevant plan policies.

Policy RES10 - Replacement Dwellings states that applications for replacement dwellings in the countryside will initially be considered in terms of the countryside policies of the plan. Where special justification exists a replacement dwelling will be permitted where it is a similar size and scale to the original dwelling and it is built on a similar footprint.

Policy BE1 requires high quality design which complements or enhances the surrounding area and adjacent properties in terms of mass, scale, design, density, materials and architectural features while retaining adequate amenity and privacy.

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.

Policy T5 applies County Council highway standards to new developments in terms of both highway design and parking targets unless a different level of provision can be justified.

Policy REC3 requires all new residential development to provide outdoor play space for children.

**Appraisal:-**

The main considerations with regards to this application are:-

i. Principle of a replacement dwelling
ii. Scale and position of dwelling
iii. Contributions
iv. Other considerations.

Principle of residential development

The applicant commenced development on the extension and alteration, however work has now ceased as the walls to be retained are in a substantially worse condition than anticipated in the original application.

The original permission included a condition which specifically stated that permission was granted for extension and alterations and not demolition and rebuilding of the existing

structure. A further note to applicant states that should it become apparent that substantial demolition works are required then the applicant should contact the Local Planning Authority.

The structural report submitted with the application states that following removal of the roof, attic floor, upper level external walls, internal cross walls and the first floor had been taken down, the contractor reported concerns both with the stability of the external brick walls and being able to satisfactorily and safely underpin the front wall foundations. The report then details significant weaknesses in the wall construction which were unexpected including courses of unbonded brick on edge close to ground slab level, unbonded vertical joints and infilling of former door and window openings without bonding the infill panels to the main walls.

Two trial pits have been dug which show four courses below the damp proof course without any spreader course or footing. The report assumes the same absence of foundations on the remainder of the building.

The report states that the walls cannot be relied upon to safely transmit vertical and horizontal loads into the ground and rebuilding would be required up to ground floor sill level. The temporary supports required would make rebuilding impossible with proper regard to health and safety of the workforce and the quality of the reconstructed walls. The unbonded joints cannot be strengthened by metal straps due to the lime mortar used in the construction. Rebuilding will be difficult as the external walls do not course across the joint lines.

The conclusions state that the works required to secure the stability and serviceable lives of the walls cannot be safely or economically carried out and recommends taking down the walls and rebuilding off adequate foundations.

Building Control having visited the site and consider the content of the report to be accurate. They state that the amount of propping and support needed would make safety a major issue. The comments recommend rebuilding.

Given the above report, and the view from Building Control Officers, a recent appeal decision on a similar proposal, and members consideration of the application at Holywell Farm, Ratby, this is considered to be special justification for demolition and rebuilding in the open countryside under policy RES10.

The Inspectors conclusion on the application at Meadow View, 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 CO2 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.

Scale and position of dwelling

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.

Contributions

While the approval of this application will lead to the construction of a new dwelling, as it is replacing the former farmhouse there will be no additional impact on play and open space and therefore a contribution cannot be requested.

Other considerations

Concerns have been raised regarding the use of the property for retail and that a condition should be imposed to prevent this. The concern regarding retail use appears to relate to the adjacent outbuildings which are currently being converted to light industrial use. As this application relates solely to the farmhouse it is not considered necessary to apply such a condition.

As the property is to be rebuilt, the opportunity now arises to have the dwelling finished in brick rather than render. A standard materials condition has been included to allow the brick finish to be agreed.

While ecology have recommended that a great crested newt survey is undertaken, this was not required on the previous permission nor on the adjacent permission for light industrial use. It is therefore considered unreasonable to request such a survey for this application. Any such protected species is afforded protection during works in any event.

Conclusions

The structural survey concludes that extending the existing property as previously permitted is not possible. These views have been confirmed by consultation comments from Building Control Officers. This is considered to be special justification under policy RES10. 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.

**RECOMMENDATION :- subject to no further significant additional objections being raised by the end of the consultation period, the Director of Community and Planning Services be granted powers to issue Planning Permission subject to the conditions below:-**

**SUMMARY OF DECISION** - The proposal is in conformity with Policy/Policies BE1, RES5, RES10 and T5 of the Hinckley and Bosworth Local Plan. Planning permission is granted subject to conditions.

1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

2 Notwithstanding the submitted details, before any development commences, representative samples of the types and colours of materials to be used on the external elevations of the proposed dwelling shall be deposited with and approved in writing by the Local Planning Authority, and the scheme shall be implemented in accordance with those approved materials.

3 This permission relates to the application as endorsed by additional plans No. 5960C-K-01A and 5960C-K-02 received by the Local Planning Authority on the 20th May 2008.

**Reasons :-**

1 To comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.

2 To ensure that the development has a satisfactory external appearance to accord with policy BE1 of the adopted Hinckley & Bosworth Local Plan.

3 To define the permission.

**Notes to Applicant:-**

1 Bats, nesting birds, great crested newts and certain other species are protected by law. If any such species are discovered before or during the works the works must be suspended and the local office of Natural England contacted for advice.

2 This permission does not grant approval under the Building Act 1984 and the Building Regulations 2000 (as amended) for which a separate application may be required. You are advised to contact the Building Control Section.

3. As from 6th April 2008 this Authority are charging for the discharge of conditions in accordance with revised fee regulations which came into force on that date. Application forms to discharge conditions and further information can be found on the planning portal web site www.planningportal.gov.uk.

**Contact Officer:- Philip Metcalfe Ext 5740**

**Item:** **15**

**Reference:** **08/00417/FUL**

**Applicant:** **Cotswold Estates Ltd**

**Location:** **Stamford House 1 Hill Street Hinckley Leicestershire LE10 1DS**

**Proposal:** **CONVERSION OF FIRST FLOOR OFFICE SPACE INTO 5 NO. FLATS AND ERECTION OF EXTENSION TO CREATE A SECOND FLOOR TO PROVIDE A FURTHER 5 NO. FLATS**

**Introduction:-**

This is a full planning application for the conversion of the first floor office space into five flats and erection of an extension to create a third floor to provide a further five flats. The proposal is at Stamford House, which is situated on the corner of Hill Street and Castle Street. The ground floor commercial uses are to be retained along with the existing car parking.

The building sits on a prominent corner in this area. of mixed uses, comprising of shops, commercial premises and residential properties.

This proposal is an amendment to a previously approved scheme (07/00131/FUL) reported to the planning committee on 1 May 2007 and granted planning permission on 18 May

# APPENDIX 6

# COMMITTEE REPORT RE FARMHOUSE AT HOLLYWELL FARM, RATBY REF: 07/00868/FUL

**Contact Officer:-** Cathy Horton Ext 5605

**Item:** 13

**Reference:** 07/00868/FUL

**Applicant:** Mr And Mrs Watts

**Location:** Holywell Farm Desford Lane Ratby Leicester Leicestershire

**Proposal:** REBUILDING REAR ELEVATION, PARTIAL REBUILDING OF SOUTH ELEVATION, REBUILDING AND EXTENSION TO NORTH ELEVATION AND NEW ROOF WITH ALTERATIONS (RE-SUBMITTED SCHEME)

**Introduction:-**

This is a resubmitted application for the re-building of the rear (east) elevation, partial re-building of the south elevation, re-building of the north elevation and new roof to a property known as Holywell Farm, Desford Lane Ratby. The site is to the west of the village of Ratby off Desford Lane in an isolated location in the countryside. The former farm complex occupies a small valley and originally comprised of a two storey farmhouse and a courtyard of two and single storey outbuildings and barns, all of which are in poor condition following a long period of being unoccupied. A Certificate of Lawful Existing Use as a residential dwelling was granted in 2005 for the former farmhouse building as it stood at that time.

The application includes a Supporting Statement, a Structural Engineers Report dated May 2003 and a further statement dated September 2006 regarding the condition of the dwelling together with a Design and Access Statement.
The supporting statement indicates that the applicant purchased the site in November 2006 with the intention of restoring the property as a family home. Prior to the purchase, a structural survey was carried out in May 2003 to assess the condition of the property and works necessary to restore the farmhouse. This survey consisted of a general level visual appraisal inspection internally and externally from ground level and no intrusive inspection of the structure was undertaken.

The survey identified the main structural problem to the dwelling to be water penetration on the valley line between the front and rear sections, and recommended works to make the house watertight in the short term. Externally it identified a number of defects including cracks on the junction between the front and rear parts of the house on the right hand elevation and general weathering to the brickwork on all elevations. The report concluded that 'the general weathering does not at present affect the structural integrity of the brickwork and is more a matter of appearance'. In terms of the 'cracks' the report states that '...the configuration of the cracks does not suggest subsidence' and any problem may relate to a lack of bonding. It states that these problems could be '...corrected by the installation of reinforcement stitching'. Whilst the report states that some of the top part of the valley wall may require rebuilding, the overall 'condition of the masonry structure' is reasonable for a building of this type and age....' despite its previous neglect. The report concludes that the main structural problems are not insurmountable to such an extent that the dwelling is structurally unsound and thus requiring demolition and rebuilding, and the report states that '...overall it is judged that the house is capable of restoration'.

The further survey carried out in 2006 noted that the condition of the building had significantly deteriorated in all parts including the spine masonry wall between the front and rear part of the dwelling and both gable walls of the rear part of the dwelling, including

some subsidence. Some subsidence had also occurred towards the front right hand corner of the building. The report recommended removal and replacement of several elements including the masonry spine wall and the gables of the rear section of the house. The structural condition of the rear wall was considered reasonable but on safety and economic grounds did not consider it feasible to retain this part in isolation.

Both the design and supporting statements describe pre-application discussions with officers regarding a first floor extension to the north facing elevation and roof alterations. The informal advice from Officer's was that those works relating to the roof appeared not to require planning permission, because they accorded with the provisions permitted under Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development Order) 1995 ("the GPDO" as amended). According to the supporting statement, in November 2006 the applicant proceeded to carry out those works that were considered to be permitted development and with the intention of creating an empty box' on which the works of restoration could be undertaken. The applicant maintains that it was during the process of 'removing all the roofing material, timbers and spine wall that the true condition of the house became apparent'. 'The rotten and collapsed roof and floor joists had caused a large section of the rear wall to spread and bow' and the preliminary restoration works 'resulted in the gap between the existing stone and brick gable walls increasing further and it became apparent that the front and rear sections were not tied together in any way.'

The supporting statement maintains that 'when the applicants and their builders returned to site on Monday 27th November 2006, the rear elevation and part of the south and north elevations had collapsed over the weekend and the remainder of the brick section was in a dangerous condition. Further investigation revealed that the rear half - the brick section- of the farmhouse had been built without foundation straight on to the clay beneath.' In the interests of safety, the remainder of the now unsupported brick gables were then removed.

The Borough Council's Building Control Officer was subsequently called out to inspect new foundations and as a result of this site visit, the Development Control section became aware of the works being undertaken. The former farmhouse was considered to have been substantially demolished to the extent that planning permission was required for it to be rebuilt. A Planning Contravention Notice was served on 6th December 2006. A Temporary Stop Notice was served on 8th February 2007 and an Enforcement Notice was served on 12th February 2007. A planning application was submitted on 8th March 2007 (Ref: 07/00302/FUL) and following assessment the proposed works to rebuild and extend the dwelling were considered by officers to amount to a replacement/new dwelling in a countryside location rather than merely repair and restoration of the former farmhouse. The proposals were therefore considered to be contrary to the countryside policies of the local development plans and the application was subsequently refused by Planning Committee on 1st May 2007 in line with officer recommendation. This decision is now the subject of an appeal in conjunction with the enforcement appeals and is due to be heard at a Public Inquiry in October 2007.

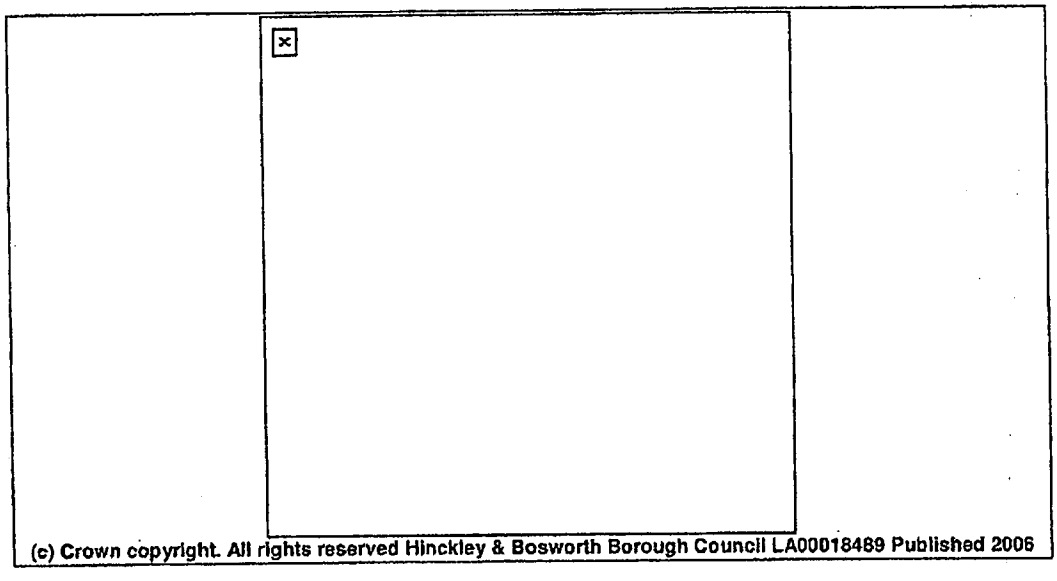
The supporting statements explain that rather than rebuild and extend, the current application proposes to rebuild and restore the farmhouse on the same footprint and at the same scale as the original and, save for the inclusion of windows on the north elevation, result in a building that would be an exact replacement of the original building, wherever possible utilising reclaimed materials to replicate what originally existed on the site. In addition, the proposed residential curtilage has been amended to replicate the original curtilage of the dwelling.

The applicant has previously stated that, whilst not material planning considerations, the consequences of a refusal of planning permission on the personal and financial

circumstances of himself and his family would be severe and would have significant effects such as bankruptcy and may result in the applicants and their young family facing homelessness.

**History:-**

| | | | |
|---|---|---|---|
| 07/00302/FUL | Rebuilding Rear Elevation, Partial Rebuilding of South Elevation, Rebuilding and Extension to North Elevation and New Roof with Alterations | Refused<br>Appeal pending | 03.05.07 |
| 06/00892/FUL | Proposed New Access Drive and Works to Divert Watercourse | Approved | 05.10.06 |
| 05/00117/CLU | Certificate Of Lawfulness For An Existing Use As A Residential Dwelling House And Its Curtilage | Granted | 26.05.05 |
| 06/00424/BOC | Enforcement case - | Appeal Pending | |




**Consultations:-**

Director of Highways, Transportation and Waste Management has no objection.

Director of Environmental Heritage Services (Archaeology) advises that as there are amendments to the proposed vehicular access in this application, the programme of archaeological works recommended for the previous application will not now be necessary as the proposed ground works are now of a smaller scale and do not appear to involve excavation/topsoil stripping. As such there are no comments on the archaeological implications of this application.

No response has been received at the time of writing this report from:-

Ratby Parish Council
Site Notice

There are no immediate neighbours.

**Development Plan Policies:-**

Government Guidance

In Planning Policy Statement 1 (PPS1) 'Delivering Sustainable Communities' the government's approach to planning is stated to be the objective of achieving sustainable development whilst protecting the natural and built environment. The guidance to Local Planning Authorities in PPS1 states that development plan policies must be the basis upon which planning applications are determined, unless other material considerations can be demonstrated.

Planning Policy Statement 7 (PPS7) 'Sustainable Development in Rural Areas' states that development in the countryside must be in suitable locations and sustainable.

Structure Plan

Strategy Policy 8 (SP8) states that the countryside will be protected for its own sake and that development in the countryside will only be acceptable if the general appearance and character of the landscape and the countryside is safeguarded or enhanced. Built development should be well integrated in relation to existing development and designed sympathetically to fit into the local surroundings. Existing buildings should be reused where appropriate. Dwellings in the countryside will be limited to those essential for the needs of agriculture or forestry, or for affordable housing for local needs in accordance with rural exception policies in local plans.

Local Plan Policies

The site lies within the countryside and in an area of particularly attractive countryside as defined in the Hinckley and Bosworth Local Plan.

Policy NE5 seeks to protect the countryside for its own sake but states that planning permission will be granted for built and other forms of development in the countryside provided that the development is for the change of use, reuse or extension of existing buildings (particularly those of historic value); and only where it does not have an adverse effect on the appearance or character of the landscape, is in keeping with the scale and character of existing buildings and the general surroundings, will not generate traffic likely to impair road safety and is effectively screened by landscaping.

Policy RES10 of the adopted Local Plan specifically relates to replacement dwellings in the countryside. The supporting paragraphs in the Local Plan state that 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 countryside resulting in a loss of rural and visual amenity and the potential for a proliferation of new dwellings across the countryside. In assessing proposals for replacement dwellings, a statement explaining the full circumstances of the case will be required. Policy RES10 states that planning permission for replacement dwelling in the countryside will initially be considered in terms of the countryside policies of the plan. Where the Borough Council is satisfied that there is special justification for the development of a replacement dwelling it will only be permitted where it is of a similar size and scale to that of the original dwelling and it is built on a similar footprint.

Policy BE1 seeks to secure attractive development and states that planning permission for development proposals will be granted where they complement or enhance the character of the surrounding area with regard to scale, mass, design, materials and architectural features.

**Appraisal:-**

The main issues to consider are the impact of the development upon the surrounding countryside, whether the proposal satisfies adopted Development Plan policies and the potential precedent that could be set should planning permission be granted.

The pre-existing dwelling did not stand completely in isolation but was part of a complex of traditional two storey and single storey farm buildings arranged around a central courtyard, lying in a small hollow and accessed by a long single width track off Desford Lane. There are public footpaths in the vicinity of the site from which the former farm complex is visible at a distance, the closest being a bridleway some 100 metres to the south. The former farmhouse had an overall footprint of around 14.5 metres by 9 metres and was a two and 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 metres length of 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 amount to a replacement dwelling in the countryside. The supporting statement states that as the proposals are to rebuild the dwelling that previously existed with a similar building (in terms of size, scale, design and footprint) the impact upon the appearance and character of the landscape would not be adverse and further that the proposed rebuilding and restoration of the former farmhouse will improve its appearance and therefore that of the surrounding landscape.

Policy NE5 seeks to protect the countryside for its own sake and to restrict new house building in the countryside unless special justification is provided to support the application (for example, if it for the operational requirements of an agricultural holding). Policy NE5 states that planning permission will be granted for built development in the countryside if it is for the change of use, reuse or extension of existing buildings but the proposals are not considered to fall within this criteria as, due to the extent of the rebuilding works involved, they are considered to be tantamount to a replacement dwelling and therefore contrary to this policy.

Policy RES10 of the adopted Local Plan specifically relates to replacement dwellings in the countryside. The policy states that planning permission for replacement dwellings in the countryside will initially be considered in terms of the countryside policies of the plan but where the Borough Council is satisfied that there is special justification for the development of a replacement dwelling it will only be permitted where it is of a similar size and scale to the original dwelling and it is to be built on a similar footprint. Whilst the application proposes a dwelling of a similar size, scale and design to the original dwelling and it is to be built on a similar footprint, the main issue is whether or not the circumstances of this case provide special justification to allow a replacement dwelling in this countryside location. The evidence provided in terms of the structural surveys and supporting statement provide details of the chronology of events that have led to the current situation, however, it is considered that the applicant has failed to demonstrate that every reasonable step was taken during the carrying out of the restoration works on the site to ensure that the external stone and brick structure was retained as much as possible. Under these circumstances, it is not considered that special justification for a replacement dwelling has been provided in this case.

The current application has amended the previously proposed access arrangements to use an existing vehicular access rather than creating a new one in order to reduce the impact

on the open countryside and the potential of disturbance of archaeological remains. The proposals include the erection of two brick pillars and access gates between the existing barns and the pond (known as the Holy Well). These amendments are considered to address the third reason for refusal on the previous application.

The applicant has provided a statement outlining the circumstances of this case and has previously stated that it was not his intention that the restoration work and subsequent events would lead to the current situation. He has stated his regret and remorse that such a situation now exists. He has also previously stated that should planning permission be refused, his financial situation is such that he may be 'bankrupt' and that he and his family would be threatened with being made homeless as a result. Whilst one sympathises with the applicant's predicament, the circumstances presented are not material planning considerations and it is considered that a precedent may be set should permission be granted contrary to adopted Development Plan policies.

**RECOMMENDATION :- REFUSE, for the following reasons :-**

1 In the opinion of the Local Planning Authority, the proposal if approved, would constitute unwarranted and undesirable visual intrusion of new residential development in this part of the open countryside, contrary to policy SP8 of the Leicestershire, Leicester and Rutland Structure Plan (adopted March 2005) and policy NE5 of the Hinckley and Bosworth Local Plan (adopted February 2001).

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.

**Contact Officer:- Mr R Wright Ext 5894**

# APPENDIX 7

# OPINION OF GREGORY JONES OF COUNSEL RE HOLLYWELL FARM REF: 07/00868/FUL

# OPINION

**Re Holwell Farm**

1. The last time this committee considered the matter of a replacement dwelling on this site, its decision to refuse for planning permission was a narrow one. However, the previous officer's report which the previous committee relied in arriving at its decision contained a series of fundamental errors. That decision is now the subject of a forthcoming appeal. The officer's report for the present application reproduces some of those errors. I address them below.

**Material Considerations**

2. The officer's report asserts that the personal hardship to the Watts family should permission be refused is not a material consideration. This is an error of law. It is well established that personal hardship is a material planning consideration (see e.g. Westminster CC v Great Portland Estate [1985] 1 AC 661, *per* Lord Scarman at 670 and also R v Maidstone BC ex p Tait [2001] JPL 660). Indeed, such personal hardship circumstances can also go beyond being merely material considerations and, for example, in the case of green belt cases can amount to "very special circumstances" (South Bucks v Porter [2004] UKHL 33).

3. Furthermore, the fact that Mr and Mrs Watts and their three children would face homelessness and associated disruption (e.g. children moving schools) is not only a material consideration but also engages their rights for respect for home and family life protected under article 8 of the European Convention on Human Rights (ECHR). Mr and Mrs Watts rights to peaceful enjoyment of their property under article 1 to the first protocol of the ECHR are also engaged. A consequence is that any decision of the council must be proportionate. Pursuant to sections 3 and 6 of the Human Rights Act 1998 the council in making its decision must act in accordance with is obligations under the ECHR.

**Precedent**

4. 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 matters speaks for itself -such a row of identical terrace houses (see *Poundstretcher Limited v SSE* (1998) 3 PLR 69 at 74F, David Widdicombe QC 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) the 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.

**The Meaning of Policy NE5**

5. The officer's report asserts that the proposal is contrary to local plan policy NE5. This statement is flawed. Even if one accepts the officer's view that the proposal is a replacement building the proposal is not in breach of NE5. NE5 is a permissive policy it sets out three categories of development that will be granted planning permission provided they satisfy certain criteria. The policy does not state that planning permission will not be granted where does not fall within those categories. Consequently, whilst a proposal for a replacement dwelling does not enjoy the support of NE5 it is not contrary to NE5. Under RES 10 which specifically addresses replacement dwellings one must look initially at applicable countryside policies (various countryside policies do apply to this proposal but not NE5) and then apply RES 10 which restricts replacement dwellings to the circumstances set out in RES 10.

6. Indeed, if the officer's report were correct it would mean that every replacement dwelling that satisfied RS10 would by definition be breach of NE5. It cannot be assumed that the local plan was drafted was such an internal inconsistency at its heart.

GREGOREY JONES
Francis Taylor Building
Inner Temple
London

28th August 2007

# APPENDIX 8

# APPEAL DECISION RE MEADOW VIEW, LYCHGATE LANE, BURBAGE REF: APP/K2420/A/07/2056141

# Appeal Decision

Site visit made on 21 January 2008

**by P Bentham-Hill BA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

**Decision date: 12 February 2008**

**Appeal Ref: APP/K2420/A/07/2056141**
**Meadow View, Lychgate Lane, Aston Flamville, Hinckley LE10 3AQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr M and Mrs S Deer against the decision of Hinckley & Bosworth Borough Council.
- The application Ref 07/00544/FUL, dated 23 April 2007, was refused by notice dated 6 July 2007.
- The development proposed is a replacement dwelling.

## Decision

1. I allow the appeal, and grant planning permission for a replacement dwelling at Meadow View, Lychgate Lane, Aston Flamville, Hinckley LE10 3AQ in accordance with the terms of the application, Ref 07/00544/FUL, dated 23 April 2007, and the plans submitted with it, subject to the following conditions:

   1) The development hereby permitted shall begin not later than three years from the date of this decision.

   2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

   3) The existing dwelling shall be demolished prior to the commencement of construction of the dwelling hereby permitted.

## Reasons

2. Policy RES10 of the Hinckley and Bosworth Local Plan states that proposals for replacement dwellings in the countryside require special justification and should be of a similar size and scale to that of the original dwelling. In respect of the first consideration, the appellants have claimed that demolition is justified on account of the presence of severe dry and wet rot, rising damp and extensive woodworm infestation. The Council's building control surveyors have accepted that demolition would be advisable, although it would be possible to keep part of the structure if full treatment is undertaken by a specialist contractor. However, it is clear from the appellant's evidence that the most cost-effective and environmentally beneficial solution, in terms of energy efficiency and $CO_2$ emissions, would be demolition rather than treatment. Accordingly, I accept that demolition is justified in this instance.

3. Whilst the proposed dwelling is larger than that which presently exists, it is identical in form, appearance and site coverage to that which would result from the implementation of the extant planning permission for the extension of the property granted in 2006. The only significant difference between the extended building permitted in 2006 and the present proposal would be its relocation by some 5 metres to the south east, further from the highway. I conclude therefore that, in effect, the proposal would be in accord with the second aspect of Policy RES10 also.

4. Similarly, the proposed development would have no greater effect on the general appearance and character of the landscape and the 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.

5. 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.

6. I have considered the proposed conditions put forward by the Council and agree that these should include provision for the control of the materials of construction. The appellants have indicated that they would be agreeable to a condition requiring the demolition of the existing dwelling prior to the construction of the new. Whilst the juxtaposition of the proposed and existing dwellings would suggest that any alternative course would be unlikely, it is nonetheless a desirable provision for the sake of clarity.

*P Bentham-Hill*

INSPECTOR

# APPENDIX 9

# PLANNING APPLICATION (REF: AVA/2006/086), APPEAL DECISION (REF: APP/M1005/C/07/2066141 AND HIGH COURT JUDGMENT RE CODDINGTON FARM, WHATSTANDWELL, MATLOCK

AMBER VALLEY BOROUGH COUNCIL

**BOROUGH DEVELOPMENT DEPARTMENT**
DEVELOPMENT SERVICES
Town Hall, Ripley, Derbyshire DE5 3SZ

Tel: 01773 841597
Fax: 01773 841523
E mail development@ambervalley.gov.uk

AMBER VALLEY BOROUGH COUNCIL RECEIVED 15 DEC 2008 BOROUGH SERVICES DEPARTMENT

UNSIGNED VERSION

FORM TCP1

**Application to Amber Valley Borough Council for Permission to Develop Land etc.**

*Town and Country Planning Act, 1990 and Planning and Compensation Act 1991.*

*Part 1*

| | | |
|---|---|---|
| 1. **Applicant** | MR + MRS A NORTHCOTT | **Agent** (*if any, to whom all correspondence will be sent*) |
| Address | C/O CODDINGTON FARM<br>CODDINGTON LANE<br>WHATSTANDWELL DE4 5EL | Address KEVIN BRADBURY ARCHITECTS<br>BENTLEY BROOK STUDIO<br>LUMSDALE ROAD<br>MATLOCK DE4 5EW<br>Phone<br>Email |

2. **Particulars of proposal for which permission or approval is sought**

(a) Full address or location of the site

CODDINGTON FARM - AS ABOVE

(b) Area of site — Fee enclosed £

(c) **Description of the proposed development including the purpose(s) for which the land and/or building(s) are to be used:** BARN CONVERSION TO DEPENDENT RELATIVE UNIT

(d) Does the applicant own or control any adjoining or nearby land? If so, give its location. YES

(e) Does the proposal involve:

| | | | | If residential, state: | |
|---|---|---|---|---|---|
| (i) | New building(s) | | NO | No. of dwelling units | |
| (ii) | Alteration or extension to existing buildings | | YES | Type of dwelling units | |
| (iii) | Change of use | | YES | No. of storeys if flats | |
| (iv) | Construction of a new access to a highway | Vehicular<br>Pedestrian | NO<br>No | If non-residential, state floorspace: | |
| (v) | Alterations of an existing access to a highway | Vehicular<br>Pedestrian | No<br>No | (a) Existing<br>(b) New | |

**And complete Part 2**

3 **Particulars of proposal for which permission or approval is sought**

**Is this application for :**

| | | | State YES those items which are reserved for subsequent approval: |
|---|---|---|---|
| (i) | Outline planning permission | NO | 1. Siting 4. Means of access |
| (ii) | Full planning permission | YES | 2. Design 5. Landscaping<br>3. External appearance |
| (iii) | Approval of reserved matters following the grant of outline permission | NO | Details of outline permission<br>Date:<br>Code: |
| (iv) | Renewal of temporary permission or retention of building or continuance of use without complying with a condition subject to which planning permission has been granted | NO | Details of previous permission<br>Date:<br>Code:<br>Condition no. |

4. **Particulars of present and previous use of buildings or land** — Are any buildings to be demolished?

(i) Present use of buildings/land (i) REDUNDANT — NO

(ii) If vacant, the last previous use (ii) HAY BARN — If yes, show on submitted plans

5. **Additional information**

(a) Is the application for industrial, office, warehousing, storage, shopping purposes or other development of a commercial nature ? — NO — If yes, complete Part 2

(b) Are there any Trees or hedges within the site or on land adjacent to the site ? — NO — If yes please provide us with the relevant arboricultural information as detailed in our supplementary planning guidance note 'Trees And Development'

(c) (i) How will surface water be disposed of? EXISTING SOAKAWAY

(ii) How will foul sewage be dealt with? EXISTING FOUL DRAINAGE SYSTEM

(d) (i) Does the proposal adjoin a public right of way? NO

(ii) Does the proposal affect a public right of way? NO

6. **Materials, etc.**

Specify details of materials and colour of the external walls and roof, means of enclosure. Landscaping details, etc. should be specified on the plans.

NATURAL BLUE SLATE ROOFING
NATURAL GRITSTONE WALLING

7. **This application is for :** ***(cross out the paragraph that does not apply)***

a. Planning permission to carry out the development as described in this application and the accompanying plans,

b. ~~Planning permission to retain buildings or works already constructed or carried out, or a change of use of land already~~ carried out as described in this application and the accompanying plans,

c. ~~Approval of details of such matters as were reserved in the outline permission for the site as described in this application and the accompanying plans,~~

**Print name** KEVIN BRADBURY **On behalf of :** MR + MRS A. NORTHCOTT

**Date** 3|7|06

8. **Certificate of Ownership under section 66 of the Town and Country Planning Act 1990**

***You must complete this Certificate. If you are the owner Certificate A applies. If you are not, use Certificate B. If the application involves an agricultural tenancy, use the final part of the certificate. Cross out the paragraphs that do not apply and sign at the bottom.***

**Certificate A :** I certify that no person other than the applicant was an owner * of any part of the land to which the application relates at the beginning of the period of 21 days before the date of this application.

* Owner means a person having a freehold interest or a leasehold interest, the un-expired term of which is less than seven years.

**Certificate B :** I certify ~~that we have given~~ notice (see Notice No. 1) to everyone other than the applicant who, 21 days before the date of the application, were owners of any ~~part of the land~~ to which the application relates, that is :

**Name and address of owner** — **Date of ~~service of notice~~**

**Agricultural tenant :** ~~None of the land~~ to which the application relates constitutes or forms part of an agricultural holding.

I have given the requisite notice to all persons ~~other~~ than the applicant who, 21 days before the date of the accompanying application, were tenants of an agricultural holding on all or ~~part of~~ the land to which the application relates, that is:-

**Name and address of tenant** — **Date of ~~service of~~ notice**

**Print name** KEVIN BRADBURY **On behalf of :** MR + MRS A. NORTHCOTT

**Date** 3|7|06

AMBER VALLEY
BOROUGH COUNCIL

C A WHYSALL
Director of Borough Development

BOROUGH DEVELOPMENT DEPARTMENT
Town Hall Ripley
Derbyshire East Midlands DE5 3SZ
Tel: 01773 570222 Fax: 01773 841523
Minicom: 01773 841490
E-Mail: enquiry@ambervalley.gov.uk
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Mr And Mrs Northcott
Coddington Farm
Coddington Lane
Whatstandwell
Matlock
Derbyshire
DE4 5EJ

Kevin Bradbury & Associates
Bentley Brook Studio
Lumsdale Road
Matlock
Derbyshire
DE4 5EW

## TOWN AND COUNTRY PLANNING ACT 1990

In pursuance of the powers vested in the Amber Valley Borough Council under the above Act and Orders and with reference to your application **(Office Code : AVA/2006/0836)** which was valid on the 4 July 2006 for permission for **Proposed barn conversion to dependent relative unit** at **Coddington Farm Coddington Lane Whatstandwell**

In the manner described in the application and shown on the accompanying plan(s) and drawing(s) **NOTICE IS HEREBY GIVEN** that permission for the proposed development is **GRANTED subject to the following conditions:**

**Conditions/Reasons**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

   **Reason** To comply with the requirements of Section 91(1) of the Town and Country Planning Act, 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The living accommodation hereby approved shall be used as a self-contained unit of occupation, ancillary to the associated main household, and shall not be severed as an independent and unconnected residence.

Date : 16 October 2006

Signed Carl H. Whysall

C A Whysall (Director of Borough Development)
Authorised Officer of the Council

APP/M1005/C/07/2057083

# Appeal Decision

Site visit made on 23 January 2008

**by Francis Farrimond DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

**Decision date:**
**7 February 2008**

**Appeal Ref: APP/M1005/C/07/2057083**
**Barn at Coddington Farm, Whatstandwell, Matlock, DE4 5EJ.**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr & Mrs Northcott against an enforcement notice issued by Amber Valley Borough Council.
- The Council's reference is AVA/2006/0836.
- The notice was issued on 11 September 2007.
- The breach of planning control as alleged in the notice is, without planning permission, the part demolition and rebuild of a barn that was given planning permission for conversion under Office Code AVA/2006/0836.
- The requirements of the notice are (i) Cease all building operations within the ambit and application of the Town & Country Planning Act 1990, save as are necessary in order to comply with the other requirements of this enforcement notice. (ii) Remove the door openings, window and associated walling within the north elevation and all internal blockwork walls and re-instate the land adjacent to the south elevation.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) (b) (c) & (f) of the Town and Country Planning Act 1990 as amended.

## Decision

1. I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the part demolition and rebuild of a barn on land at Coddington Farm, Whatstandwell, Matlock, DE4 5EJ, referred to in the notice, subject to the conditions in the attached schedule.

## Site & surroundings

2. The appeal site comprises part of Coddington Farm being one of a complex of buildings, including a residential farm house, set in predominantly open countryside. In addition to the location of the original barn the notice plan includes open land adjacent to the barn where some ground excavation works have occurred.

## Site History

3. The relevant starting point is the granting of a planning permission, reference number AVA/2006/0836, on 16 October 2006 for the conversion of a barn at Coddington Farm to a dwelling. That permission was subject to conditions,

including a condition to limit residential use of the barn to accommodation ancillary to that of the main farmhouse and preventing use as an independent and unconnected dwelling.

4. Following works commencing on site the Council's attention was drawn to variations from the approved scheme. Following investigations by Council officers the appeal notice, with an accompanying Stop Notice, was issued.

**Reasons**

**The appeal on ground (b)**

5. For an appeal on ground (b) to succeed it is necessary for the Appellant to demonstrate that that what is alleged in the notice has not occurred as a matter of fact. The Appellants' argument, essentially, is that all works have been within the terms of the planning permission granted in October 2006. However, it is not disputed that more demolition and rebuilding has occurred than indicated in the approved plans and drawings. What is more, land adjacent to the south elevation of the building has been excavated which was not indicated in the approved scheme. On that basis, the allegation in the notice has occurred as a matter of fact.

6. The appeal on ground (b) fails.

**The appeal on ground (c)**

7. The Appellants point to a letter (dated 7 March 2006) from their architect to the Council indicating that whilst the barn was in generally sound condition the north elevation had bulged due to loading from the roof structure and would require some rebuilding. Moreover, although the roof was in sound condition it would need reconstruction following wall repairs and to achieve headroom and insulation requirements to comply with Building Regulations. Nonetheless, in their submissions they accept that although about 16% of the external wall area was envisaged as needing rebuilding in fact more like 37% will now be rebuilt. In my opinion, as a matter of fact and degree, that additional rebuilding amounts to a material change to the scheme from that approved.

8. Furthermore, the approved scheme did not indicate any excavation of ground levels around the building. I observed that a significant amount of material had been excavated adjacent to the south side of the building on land which is now included in the notice plan. Excavation is an engineering operation constituting development within the terms of Section 55 of the amended 1990 Act. Development has occurred which is not permitted by any Government Act or Order, therefore, planning permission is required for the material variation of the amount of rebuilding of the barn and for the adjacent engineering works. Since none has been granted there has been a breach of planning control.

9. The appeal on ground (c) fails.

**The appeal on ground (a) and the deemed application for planning permission**

10. The proposal before me is to retain the current works to the barn and to complete the scheme insofar as is now possible within the terms of the planning permission reference number AVA/2006/0836.

**Main issue**

11. The main issue is the effect of the proposal on the character and appearance of the countryside and the Special Landscape Area.

**Reasons**

12. The adopted Amber Valley Local Plan 2006 includes Policies H6, H12, EN1, EN6 & LS6, together with related Design Guidance Note 4, drawn to my attention by the Council. The policy objectives are consistent with Government advice in Planning Policy Statement 7 *Sustainable Development in Rural Areas*. Those objectives seek to protect the countryside for its own sake, especially as in this case, where there is landscape of special quality. And, to direct non-essential rural need new housing development to identified settlements in the local plan. One exception, under Policy H6, allows for conversion of existing rural buildings to dwellings where they are not suitable for employment or tourism uses. In such cases they must be of permanent and substantial construction, where their form, bulk and general design is in keeping with their surroundings and they can be converted without extensive alteration, rebuilding or extension.

13. In granting the October 2006 planning permission the Council accepted that the approved scheme met the requirements of local plan Policy H6. Nor did it request a structural condition survey or impose a condition that the development should be carried out strictly in accordance with the approved plans and drawings. From the Appellant's architect's letter dated 7 March 2006 it should also have been clear that part of the north elevation, together with the whole of the roof, were to be reconstructed. However, the Council argues that the former barn has been substantially demolished such that the original building no longer exists and cannot be rebuilt.

14. The Appellant concedes that out of a total external wall area of about 135 square metres about 50 square metres has been demolished for rebuilding. That represents about 37% of the total wall area as against about 16% envisaged in the approved scheme. It is claimed that was necessary, in addition to the envisaged wall repairs and roof rebuilding, in forming the approved door and window openings. They also indicate that the only changes to the elevations of the former barn, save for rebuilt sections of wall, are the insertion of a new doorway and the re-opening of a window opening in the north elevation, an existing window in the east elevation has been altered to accommodate the raised floor level, a new window inserted in the west elevation and 2 roof lights will be installed into the north and south roof slopes. But, those alterations were substantially indicated in the approved drawings.

15. From the drawings and photographs submitted, together with my own inspection of the site, it is clear that in addition to the removal of the original barn roof, a substantial part of the whole of the north elevation, together with parts of the first floor of the south, east and west elevations have been removed or rebuilt. And, where new external works have occurred they have the appearance of new development. 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.

16. Turning to the excavation works that have been carried out to the south side of the barn no such works were indicated in the approved conversion scheme. And, although the Appellants claim that those works would avoid damp penetration such extensive excavation, as conceded by the Appellants, is not necessary for that purpose because a much smaller strip adjacent to the building could avoid that problem and to provide access for maintenance. Moreover, formation of an extensive outdoor amenity area for the proposed dwelling would have a harmful impact on the rural character of the area. In my view, appropriate re-instatement of that land could be required by a suitable condition of a planning permission.

17. I have taken into account the representations of interested persons and the Crich Parish Council in support of the Council's stance but they do not alter the balance of my conclusions on the main issue.

**Conclusions**

18. Taking these considerations together, I conclude that the proposal should be allowed subject to suitable conditions. Those conditions would require any further works to conform to the design of the approved scheme, save for the greater extent of rebuilding now necessary, and reinstatement of the excavation works in accordance with details of a scheme to be agreed with the local planning authority. I will also attach the conditions of the existing planning permission, where still relevant, including the restrictive occupancy condition. The reasons for those conditions are to safeguard visual amenity and having regard to the personal circumstances of the Appellants. On that basis, the proposal would not harm the character and appearance of the countryside or the Special Landscape Area.

19. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (f) does not therefore need to be considered.

*Francis Farrimond*

INSPECTOR

**Schedule of conditions**

1) Before the dwelling hereby approved is occupied a scheme for the treatment of the excavated land within the notice site shall have been submitted to the local planning authority and that scheme shall have been approved and effectively implemented. Thereafter the implemented scheme shall be retained.

2) All further operational development shall be completed in accordance with the details indicated in the drawings accompanying planning permission reference number AVA/2006/0836 save for the greater extent of rebuilding now necessary.

3) All windows and doors indicated in the drawings accompanying planning permission reference number AVA/2006/0836 shall be painted and not stained and the roof lights shall not project above the roofline.

4) All windows shall be of the flush casement type, with no projecting sills, drip moulds, or trickle vents and shall be recessed a minimum of 75mm from the face of the wall.

5) The living accommodation hereby approved shall be used as a self-contained unit of occupation, ancillary to the main household, and shall not be severed as an independent and unconnected residence.

Neutral Citation Number: [2009] EWHC 80 (Admin)

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**ADMINISTRATIVE COURT**

Case No: CO/2824/2008

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/01/2009

**Before :**

**MR JUSTICE BEAN**

---

**Between :**

**AMBER VALLEY BOROUGH COUNCIL** — **Claimant**

**- and -**

**SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT**

**- and -**

**MR ALLAN NORTHCOTT**
**MRS MARGARET NORTHCOTT** — **Defendants**

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**Andrew Hogan** (instructed by **Geldards LLP**) for the Claimant
Richard Honey (instructed by the Treasury Solicitor) for the Secretary of State

**Mr & Mrs Northcott did not appear and were not represented.**

Hearing dates: 16th January 2009

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# Approved Judgment

**MR JUSTICE BEAN :**

1. In this claim under section 288 of the Town and Country Planning Act 1990 Amber Valley District Council applies to quash the decision of the Secretary of State's planning inspector contained in a decision letter dated 7th February 2008. The Inspector granted planning permission for the part demolition and rebuilding of a barn located in a Special Landscape Area, pursuant to the deemed application for planning permission under section 177 of the 1990 Act which followed an appeal by the owners of the barn, Mr and Mrs Northcott, against an enforcement notice issued by the Council. The requirements of the notice were to stop work and remove door openings, a window and walling.

2. The background to these proceedings is that in late 2005 the Northcotts applied for planning permission to convert a barn located on their farm property to provide ancillary residential accommodation for a close relative who was suffering from cancer. This first application was refused in May 2006 because it involved forming new openings in the elevations of the barn. A second, revised application was submitted in July 2006. The description of the proposed development stated that it was to be a "barn conversion to dependent relative unit". The application stated that it would involve "alteration or extension to existing buildings" and a change of use. The officer's report on the revised application concluded that the barn could be converted without extensive alteration or addition and recommended approval. Planning permission was granted on 16th October 2006 for the proposed barn conversion to a dependent relative unit "in the manner described in the application and shown on the accompanying plans and drawings". It was noted that the permission was given in view of the personal circumstances of the applicant, and that the creation of a dwelling independent of the main household would not normally be permitted on the site, due to its relationship to existing dwellings and the level of amenity provision, in accordance with the policies of the local plan.

3. There was no condition or limitation which expressly prevented or restricted the extent of any alterations which could be made to the barn, including any rebuilding; but Mr Andrew Hogan, on behalf of the Council, contends that such a condition would have been otiose in the light of the permission stating that the proposed conversion was to be "in the manner described in the application and shown on the accompanying plans and drawings". However, the Northcotts' architect subsequently expressed the view that it was self evident that in order to insert the new door and complete the fenestration that had been approved, some localised rebuilding would be essential.

4. The enforcement notice and stop notice were served when the building had been partly dismantled. The Council took the view that the proposed rebuilding of the roof and part of the walls went beyond what was permitted. Indeed, it took the view that what had been done amounted to demolition and rebuilding, and that it was no longer possible to convert the building in accordance with the planning permission. The Chief Executive of the Council, Mr Carney, accepts in his witness statement that the effect of the enforcement notice was, and would be, to leave a ruin. He goes on:-

> "The intention of the Council when authorising enforcement action in the terms it did was to leave a ruin, which was considered to be preferable to a new residential building in this

> location having regard to the provisions of the development plan as a whole. This would have left the Second Defendants with a choice. They could either have proceeded to total demolition, which they could have done without further planning consent, or they could have made a fresh planning application for further development, which application would then have been considered having regard to the provisions of the development plan as a whole."

5. The court bundle includes photographs taken by what Mr Hogan described as a "concerned neighbour" showing the state of the building before and after the work in 2007. The commentary by the anonymous photographer indicates an opinion that what the Northcotts had alleged to be an accidental collapse when the roof beams were removed was nothing of the kind. Mr Carney in his witness statement says that the Northcotts "had only themselves to blame for the situation which they had brought about. There was no need for them to remove the whole of the roof to undertake the works that they had consent to do." But I should make it clear that Mr Hogan, on behalf of the Council, assured me that it was no part of his clients' case that the Northcotts had acted dishonestly.

*The Inspector's decision*

6. The Northcotts appealed to the Secretary of State under section 174(2), subsections (a) (b) (c) and (f) of the 1990 Act (as amended) against the requirements of the enforcement notice. It was argued on their behalf that the works fell within the terms of the 2006 planning permission, even though more demolition and rebuilding had proved necessary than was contained in the approved scheme. The additional rebuilding was held by the Inspector to be a material change to the scheme and a material variation to the amount of rebuilding, which required an additional planning permission to that which had been previously granted. He held accordingly that there had been a breach of planning control and that the appeals under sub-paragraphs (b) and (c) of section 174(2) failed. He turned to the appeal under section 174(2)(a) and the deemed application for planning permission under section 177(5).

7. He began by stating in paragraph 11 of his decision that "the main issue is the effect of the proposal on the character and appearance of the countryside and the Special Landscape Area." It was common ground before him, and remained common ground before me (as Mr Hogan confirmed), that this was an accurate summary of the main issue.

8. The Inspector continued:-

> "12. The adopted Amber Valley Local Plan 2006 includes Policies H6, H12, EN1, EN6 & LS6, together with related Design Guidance Note 4, drawn to my attention by the Council. The policy objectives are consistent with Government advice in Planning Policy Statement 7 *Sustainable Development in Rural Areas*. Those objectives seek to protect the countryside for its own sake, especially as in this case, where there is landscape of special quality. And, to direct non-essential rural need new housing development to identified settlements in the local plan.

One exception, under Policy H6, allows for conversion of existing rural buildings to dwellings where they are not suitable for employment or tourism uses. In such cases they must be of permanent and substantial construction, where their form, bulk and general design is in keeping with their surroundings and they can be converted without extensive alteration, rebuilding or extension.

13. In granting the October 2006 planning permission the Council accepted that the approved scheme met the requirements of local plan Policy H6. Nor did it request a structural condition survey or impose a condition that the development should be carried out strictly in accordance with the approved plans and drawings. From the Appellant's architect's letter dated 7 March 2006 it should also have been clear that part of the north elevation, together with the whole of the roof, were to be reconstructed. However, the Council argues that the former barn has been substantially demolished, such that the original building no longer exists and cannot be rebuilt.

14. The Appellant concedes that out of a total external wall area of about 135 square metres about 50 square metres has been demolished for rebuilding. That represents about 37% of the total wall area as against about 16% envisaged in the approved scheme. It is claimed that was necessary, in addition to the envisaged wall repairs and roof rebuilding, in forming the approved door and window openings. They also indicate that the only changes to the elevations of the former barn, save for rebuilt sections of wall, are the north elevation, an existing window in the east elevation has been altered to accommodate the raised floor level, a new window inserted in the west elevation and 2 roof lights will be installed into the north and south roof slopes. But, those alterations were substantially indicated in the approved drawings.

15. From the drawings and photographs submitted, together with my own inspection of the site, it is clear that in addition to the removal of the original barn roof, a substantial part of the whole of the north elevation, together with parts of the first floor of the south, east and west elevations have been removed or rebuilt. And, where new external works have occurred they have the appearance of new development. 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 new works. The alternative, in accordance with the notice requirements, would be retention of the remaining original walls of the barn as a ruin...
>
> 18. Taking these considerations together, I conclude that the proposal should be allowed subject to suitable conditions. Those conditions would require any further works to conform to the design of the approved scheme, save for the greater extent of rebuilding now necessary, and reinstatement of the excavation works in accordance with details of a scheme to be agreed with the local planning authority. I will also attach the conditions of the existing planning permission, where still relevant, including the restrictive occupancy condition. The reasons for those conditions are to safeguard visual amenity and having regard to the personal circumstances of the Appellants. On that basis, the proposal would not harm the character and appearance of the countryside or the Special Landscape Area.
>
> 19. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (f) does not therefore need to be considered."

9. The Inspector referred in paragraph 12 to specific provisions of the local development plan. Mr Hogan laid particular emphasis on policy H6 in the Housing section of the Borough Local Plan, which states:-

> "Planning permission for the conversion of existing buildings in the countryside to residential use from other usage will only be permitted if...the building or group of buildings is of permanent and substantial construction, is of a form, bulk and general design in keeping with its surroundings and can be converted without extensive alteration, rebuilding or extension."

10. Policy H12 in the same section provides that "in considering applications for housing development, the Borough Council will require that the proposals:- (a) are in scale and character with their surroundings..."

11. In the Environment section of the Borough Local Plan Policy EN6 provides that "planning permission for new development, including conversions of and extensions to existing buildings, will only be permitted in Special Landscape Areas if it does not have an adverse effect on the landscape quality or character."

12. Policy EN1 provides that "in the countryside, outside the built framework of settlements, new development will only be permitted where it:

a) is essential in conjunction with the requirements of agriculture or forestry,

b) is necessary within the countryside and cannot reasonably be located within an existing settlement, or

c) will improve the viability, accessibility or community value of existing services and facilities in settlements remote from service centres provided by the towns and larger villages."

13. Finally, though not strictly part of the local development plan, a "Design Guidance Note" issued by the Council states that where alterations are made to agricultural buildings "it is most important that the original scheme is not spoilt by individual occupiers altering the building in an inappropriate manner...the proposed use must require minimal alteration to the external and internal character and appearance of the building for it to be acceptable. It is for this reason that the change of use of agricultural buildings to residential use will normally be unacceptable as it is rarely possible to convert agricultural buildings for residential use without a large amount of alteration to provide acceptable living conditions".

*General propositions of law*

14. By virtue of section 38 of the Planning and Compulsory Purchase Act 2004, if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise. But, as Ouseley J held in *R(Cummins) v Camden LBC* [2001] EWHC (Admin) 1116, the sub-section requires compliance with the development plan considered as a whole, and it is for the Inspector to identify which policies are dominant or directly relevant rather than tangentially relevant. And by section 177(2) of the 1990 Act the Inspector, in considering whether to grant planning permission under subsection (1) was bound to have regard to the provisions of the development plan "so far as material to the subject matter of the enforcement Notice" (that is to say so far as material to the breaches which had been established) and to any other material considerations.

15. In *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1WLR 759 at 780 Lord Hoffmann said:-

> " The law has always made a clear distinction between the question of whether something is a material consideration and the weight which it should be given. The former is a question of law and the latter is a question of planning judgment, which is entirely a matter for the planning authority. Provided that the planning authority has regard to all material considerations, it is at liberty (provided that it does not lapse into *Wednesbury* irrationality) to give them whatever weight the planning authority thinks fit or no weight at all. The fact that the law regards something as a material consideration therefore involves no view about the part, if any, which it should play in the decision-making process.

> This distinction between whether something is a material consideration and the weight which it should be given is only one aspect of a fundamental principle of British planning law, namely that the courts are concerned only with the legality of the decision-making process and not with the merits of the decision. If there is one principle of planning law more firmly settled than any other, it is that matters of planning judgment are within the exclusive province of the local planning authority or the Secretary of State."

16. What the statute does not do is to tell the decision-maker what weight to accord either to the development plan or to other material considerations (per Glidewell LJ in *Loup v Secretary of State for the Environment* (1995) 71 P&CR 175 at 186, cited by Lord Clyde in *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447 at 1458). An application under section 288 is not an opportunity for a review of the planning merits of the Inspector's decision, and Court must be astute to ensure that such challenges are not used as a cloak for what is in truth a re-run of the arguments on the planning merits (per Sullivan J in *R(Newsmith Stainless Ltd) v Secretary of State for the Environment Transport and the Regions* [2001] EWHC (Admin) 74). Decision letters are to be read in a straightforward down-to-earth way, without excessive legalism or exegetical sophistication (per Sir Thomas Bingham MR in *Clarke Homes v Secretary of State for the Environment* (1993) 66 P & CR 263 at 271), and excessively legalistic textual criticism of planning decision letters is something the courts should strongly discourage (*South Lakeland DC v Secretary of State for the Environment* [1992] 2 AC 141 at 148). In a well known passage in *South Bucks DC v Porter* (No 2) [2004] 1 WLR 1953 at 1964, Lord Brown of Eaton-under-Heywood said –

> "The reasons given for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law,.....But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration.....A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision".

*The Claimant's case*

17. Mr Hogan's skeleton argument summarised the principal points of the Council's case as follows:-

> "The Inspector failed to identify the magnitude of the departure from what had been approved [in 2006]; then proceeded to

> grant planning permission failing to take into account the relevant planning policies and guidance forming the development plan, which precluded development of the type and scale undertaken by the [Northcotts]. What he should have done is refuse planning permission leaving a ruin in the landscape, a more natural adornment than what substantially, as a question of fact and degree, is a new house".

18. The first ground of challenge pleaded in the Particulars of Claim is that the Inspector erred in stating that the "relevant starting point" was the 2006 grant of planning permission for the conversion of a barn to dwelling. The Council argues that the starting point should have been the position as it stood on the ground at the time of the service of the enforcement notice.

19. I accept the submission of Mr Richard Honey, for the Secretary of State, that the Inspector did not adopt the wrong starting point. The reference in the decision letter to a starting point is in relation to the site history. The Inspector, as he records in paragraph 1 of the decision, was considering whether to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act for the development already carried out, namely the part demolition and rebuild of the barn. The 2006 planning permission was clearly a relevant material consideration. It had permitted the conversion of the barn from agricultural to residential use.

20. The Council next argued that the Inspector was wrong to describe the development for which permission was sought from him as a part demolition and rebuilding of a barn (as opposed to the partial demolition of a barn and construction of a new dwelling house). But the breach of planning control in the enforcement notice was stated to be "the part demolition and rebuild of a barn", and the Inspector adopted the same wording in granting permission for "the development already carried out, namely the part demolition and rebuild of a barn". Given the terms of section 177(5) of the 1990 Act, stating that the Appellant is deemed to have applied for planning permission "in respect of the matter stated in the enforcement notice as constituting the breach of planning control", this was the correct approach to adopt. Planning permission was not, and could not have been, granted for "demolition and construction of a new dwelling house".

21. In any event, although the Council argued before me that the Northcotts have built or sought to build a new house, that is not what the Inspector found, following his examination of the evidence and a site inspection. 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.

22. Mr Hogan next criticised the sentence in paragraph 13 of the decision stating that 'from the appellant's architect's letter dated 7th March 2006 it should also have been clear that part of the north elevation, together with the whole of the roof, were to be reconstructed'. Since the letter was not referred to in the 2006 planning permission it was, he submits, an irrelevant matter in construing the extent of that permission. He

referred me to the decision of Keene J in *R v Ashford BC ex p Shepway DC* [1999] PLCR 12.

23. It is curious that the council should now argue that the letter of 7th March 2006 was an irrelevant consideration to which the inspector should have paid no attention, since it was relied on by the council in its submissions to the inspector in answer to the Northcotts' appeal. In any event, I accept the submission of Mr Honey that the description of the development in the 2006 planning permission was ambiguous as to the extent of the works which would be required. Where there is ambiguity in the wording of the permission, it is permissible to look at extrinsic material to resolve that ambiguity, as the *Shepway* case among others demonstrates. The letter was relevant extrinsic material within that principle.

24. The Claimant next asserts that the inspector was wrong to find that the development permitted by the 2006 planning permission necessarily comprised an element of demolition. The *Tesco Stores* case is authority for the proposition that the detailed ambit of the works permitted was a matter for the inspector's judgment based on the evidence, subject only to *Wednesbury* limits. In any event, it was not the council's case before the Inspector that the 2006 planning permission comprised no element of demolition. It is true that the application form answered 'no' to the question 'are any buildings to be demolished?'; but the Inspector was entitled to take the view (as do I, for what it is worth) that this answer on a common sense construction did not rule out the *partial* demolition and rebuilding of the barn. The application form made it clear that alterations to existing buildings were required; plainly these could include partial rebuilding. I note that in its appeal statement before the Inspector the council contended only that *extensive* alterations and *substantial* demolition were not authorised, and argued that there had been extensive demolition which had "gone further than that required for a proposed conversion". There was ample evidence to support the Inspector's conclusion that the 2006 planning permission authorised some element of demolition and rebuilding.

*The local development plan*

25. The Claimant's grounds then turn to alleged failures to have regard to the policies in the local development plan. I have already set out the five passages to which Mr Hogan referred me. They all seem to me to feed into the main issue, which both sides accept the inspector to have identified correctly, namely "the effect of the proposal on the character and appearance of the countryside and the Special Landscape Area". The question of whether the barn could be converted for residential purposes had been determined in the Northcotts' favour in 2006. The events of 2007 did not involve any increase in the footprint of the building. But in so far as the appearance of the building as rebuilt might differ from the appearance of the building shown on the plans for which permission had been granted, this might have an adverse effect on the character and appearance of the countryside in the Special Landscape Area. That was a legitimate concern of the Council, and it was the main issue which the Inspector was required to, and did, address.

26. As to the particular policies mentioned by Mr Hogan (and by the Inspector in paragraph 12 of his decision): policy H6 applies directly only to applications for planning permission for the conversion of existing buildings to residential use. Planning permission had already been granted for the conversion of the barn to

residential use in 2006. I asked Mr Hogan whether it was the Council's contention that if the barn had simply fallen down from natural causes in 2007, policy H6 would have prohibited permission being given for its reconstruction for residential use. His answer was that it would have done so. This seems to me surprising. I do not think that policy H6 was more than tangentially relevant in the present case.

27. Policy H12(a) similarly applies directly only to applications for housing development, which was not what the inspector had to determine. In any event, the requirement that the proposal should be "in ... character with [the] surroundings", is embodied within the main issue and policy objectives identified by the Inspector.

28. Policy EN1, applying to 'new development', does not appear to me to be directly applicable to the rebuilding or conversion of the barn; and if it was, that issue had been decided in 2006.

29. The design guidance note was not part of the local development plan. In any case the guidance which it gives was embodied within the main issue identified by the Inspector.

30. Policy EN6 *was* directly relevant to the application which the Inspector had to determine, as it had been to the original 2006 application. But it, too, was embodied in, indeed was indistinguishable from, the main issue identified by the Inspector coupled with the policy objective, which he records in paragraph 12, of protecting the countryside for its own sake especially where there is landscape of special quality. His conclusion in paragraph 15 that "the effect on the character and the appearance of the area, including the Special Landscape Area, would be little different to that of the improved scheme for the original barn" is one which was open to him on the evidence and involved no departure from nor any misinterpretation of policy EN6. It is, in my judgment, fatal to the Council's case.

31. Mr Hogan 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.

*Conclusion*

32. Applying Lord Brown's observations in the *South Bucks* case, the reasons given by the Inspector were entirely adequate. They enable the reader to understand why the main issue was resolved as it was, and they do not give rise to any substantial doubt on my part as to whether the Inspector erred in law.

33. In his witness statement Mr Carney states frankly that "this appeal raises in part the old issue [of the] tension between decisions made by locally elected representatives and review of those decisions by independent planning inspectors". But the fact that the Council disagrees with the Inspector's decision is not a ground for overturning it. I agree with Mr Honey that this challenge is in substance an attempt to re-run the merits of the appeal to the Secretary of State. The council's claim under Section 288 of the 1990 Act must be dismissed.

# APPENDIX 10

# APPEAL DECISION RE THE HAYBARN, MOUNT FARM, HOPTON, STAFFORDSHIRE REF: APP/Y3425/C/06/2005797 & 2005806 & 2012607 & 2012602

04/03082/FUL - retention of dwelling (Haybarn)

# Appeal Decision

Inquiry held on 19 September 2006
Site visit made on 19 September 2006

**by Francis Farrimond DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities & Local Government**

The Planning Inspectorate
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Date
09 Oct 2006

**Appeals Ref: APP/Y3425/C/06/2005797& 2005806 & 2012607 & 2012612**
**The Haybarn, Mount Farm, Hopton, Staffordshire, ST18 0AH.**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mrs Susan Mary James & Mr Robert Stephen James against 2 enforcement notices issued by Stafford Borough Council.
- The Council's reference is 830.824.
- The notices were issued on 8 November 2005 & 20 February 2006.
- The breach of planning control as alleged in both notices is, without planning permission, the erection of a building, in the approximate position indicated by cross hatching on the attached plan EN 830.824.
- The requirements of the notices are to (i) demolish the building and (ii) remove from the land all building materials and rubble arising from compliance with the first requirement.
- The periods for compliance with the requirements are (i) one month and (ii) 2 months.
- The appeals are proceeding on the grounds set out in section 174(2) (a) (e) & (f) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed subject to the enforcement notice being corrected in the terms set out below in the Formal Decision.**

## Procedural Matters

1. At the Inquiry it was agreed that both notices are the same, the second notice having been issued to overcome a service defect in the first notice. On that basis, since no one had been disadvantaged, the appeals against the first notice on ground (e) were not pursued. Furthermore, the appeals on ground (f) against the second notice were also withdrawn before the Inquiry.

2. It was also agreed that the notice allegations be corrected to refer to 'the erection of a building for use as a dwellinghouse'.

## Site & Surroundings

3. The appeal site is located about 2 and a half miles north east of the town centre of Stafford. It lies to the south of Hopton Lane within the courtyard complex of buildings at Mount Farm. The appeal building is located centrally within the courtyard to the south of The Mount Farmhouse, to the north east of residential barn conversions at The Dairy, The Mill House and The Granery and to the north west of a garage block. The appeal site amounts to about 0.03 hectare in size and contains a 4 bedroom dwelling of 2 storeys of brick and tile construction with a rear garden to the west side providing outdoor amenity space. That garden area, together with a small area at the front of the dwelling is enclosed by brick walls and close boarded fencing up to about 2 metres high. The appeal site is mainly flat

with adjacent land sloping gently up from south to north. There are scattered dwellings nearby but otherwise the building group lies in open countryside between the settlement of Hopton to the east and a small residential development to the west.

**Site History**

4. Mount Farm was previously a working farm with a farmhouse and a group of farm buildings adjacent to the south side of Hopton Lane. In June 2002 planning permission was granted for the conversion of buildings at Mount Farm to form 4 dwellings (The Haybarn, The Dairy, The Mill House and The Granery). The original Haybarn building was physically attached to the original Mount Farmhouse. In May 2004 planning permission was granted for the provision of the garage block where a former building of 2 storeys constructed of breeze blocks with an asbestos clad roof was demolished.

5. When the Council became aware of events at The Haybarn, the substantial collapse of the original building as a result of efforts to underpin it, a formal site visit on 20 August 2004 resulted in the resolution to issue an enforcement notice alleging the erection of a new building. In November 2004 an application for retrospective planning permission for the rebuilt Haybarn was refused. About the same time retrospective planning permission was granted for works to the original farmhouse and garage. Two further applications to retain The Haybarn as an extension to The Mount Farmhouse in December 2004 and January 2005 were withdrawn when it became clear that they would not be recommended for approval. The appeal notices were then issued.

**The appeals on ground (a) and the deemed application for planning permission**

6. The proposal before me in all the appeals is the same and seeks retrospective planning permission for the appeal dwelling.

**Main Issue**

7. The main issue is the effect of the proposal on the character and appearance of the countryside.

**Planning Policy**

8. The development plan includes the West Midlands Regional Spatial Strategy, adopted in June 2004, the Staffordshire & Stoke-on-Trent Structure Plan (SP), adopted in May 2001 and the Stafford Borough Local Plan (LP), adopted in October 1998. Those plans include a framework of policies relating to the provision of new dwellings in the countryside from either new buildings or conversion of existing buildings. Essentially new build dwellings are strictly controlled unless required for an essential rural purpose such as accommodation for a key rural worker. Conversion of existing buildings to dwellings is permitted provided that the building is of sound construction, the conversion respects the character of the original building and its setting and there is no harm to any other planning interest. Those development plan policies echo Government advice in Planning Policy Guidance (PPG) 3 *Housing* and Planning Policy Statement (PPS) 7 *Sustainable Development in Rural Areas.*

9. The parties agree that the appeal proposal accords with relevant parts of the development plan (including the Council's Supplementary Planning Guidance *Space About Dwellings* standards) save for those identified in the notice. Those disputed policies are Policies E & D1 (ii) & (iii), E & D7 (iii), HOU3, of the LP together with H11 (not identified in the

notice), of the SP. Those policies indicate that new development should respect and integrate with the character and appearance of the locality in terms of scale, materials, layout and siting, both itself and in relation to adjoining buildings. It should also be in sympathy with and enhance the character and appearance of the locality. New development should not harm the landscape, wildlife habitats or historic features. Policy HOU3 states that new residential development outside Residential Development Boundaries (which is the case here) will not be acceptable other than for an essential rural purpose with occupation of the dwelling controlled by a restrictive user condition or agreement. Any such development must also be of a scale and character appropriate to the local environment, the operation it serves and have full regard to environmental protection policies.

10. SP Policy H11 *Housing in Open Countryside* does not permit housing by means of new buildings in the open countryside outside of development boundaries except where special circumstances exist, such as essential rural need, and any development must be of a scale and character appropriate to the local environment and have full regard to countryside protection policies.

**Reasons**

11. The Council claims that the appeal proposal conflicts with the objectives of the LP & SP policies identified. It is considered to be an unnecessary new build property located in the countryside and outside of Residential Development Boundaries without any special justification within the terms of Policies HOU3 and H11. In addition, the likely cost or rental of the building is likely to far exceed that afforded by essential rural workers. It is also incongruous by reason of its materials, which are over elaborate for an agricultural building, and starkly visible from the east, particularly in views along Hopton Lane and from dwellings on the edge of Hopton. The new build character of the structure is marked by straight horizontal and vertical edges, resulting from use of modern machine made bricks, mortar, tiles (including decorative tile bands), windows and doors which show no signs of weathering. The ratio of roof slope to walling is also claimed to have lessened thereby weakening the appearance of the building as a former agricultural building. Therefore, it harms the rural character and appearance of the area.

12. In terms of sustainability the nearby settlement of Hopton has few community services and the bus service is infrequent. Stafford town centre, schools and employment areas are too far away for convenient walking. The site is not 'brownfield' since agricultural land and buildings are excluded from that definition nor would a new dwelling achieve rural regeneration within the guidelines of Government advice in PPG3 & PPS7. Moreover, any benefits from the removal of unsightly buildings at Mount Farm already accrued from the 2002 conversion permission and no further such benefits can now be offered.

13. The Appellants have drawn attention to other local barn conversion schemes, principally at Moreton Cottage and Horsley Hall Farm where substantial rebuilding has been permitted. But, each case is different and the examples quoted do not, in the Council's view, justify this harmful scheme. What is more, in those cases the developers consulted with the Council from the outset of problems with building conditions occurring and agreed method statements and engaged structural engineers before and during the event. Nor are there considered to be special circumstances within the terms of SP Policy 11 to justify this harmful proposal.

14. There is no dispute that the appeal building is located in the countryside and outside of Residential Development Boundaries shown in the LP. Nor is any essential rural need argued in favour of the building. Furthermore, although the Appellants indicate that the appeal building re-used materials, mainly bricks, from the original Haybarn, or other buildings on the Mount Farm site, I consider that as a matter of fact and degree, the current structure is effectively a new building rather than a conversion of a former structure. Significantly, that fact is not disputed by the Appellants.

15. A narrow interpretation of the disputed LP policies identified may lead to the conclusion that the building is in conflict with the objectives of those policies to protect the rural character of the countryside for its own sake. What is more, because the original building has now been demolished, the permission for its conversion into a dwelling is no longer capable of implementation.

16. However, SP Policy 11 does allow for consideration of special circumstances. In this case, the appeal building measures about 11.3m long by 6.3m wide and is about 8.3 metres high to the roof ridge. It also has a small projection with a lean-to roof at the south end. It is similar in size, shape, siting and bulk to the former Haybarn. On that basis, its impact in the countryside is little different from a building that had 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 farm house 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 full implementation of the 2002 planning permission.

17. The claimed alteration of the ratio of roof slope to wall, only based upon rough calculations of appearances in photographs, is not, in my opinion, readily apparent or harmful to the character of the building. The roof tiles are new, but since they are the same as those permitted on the adjacent original farm dwelling, I see little benefit from replacing them with others. There are minor differences to the window and door openings from those approved. However, in my view, they are not out of character with the building itself or its newly converted neighbours. The bricks have been cleaned but that would have occurred with the approved conversion together with new pointing. And, despite what the Council claim, the external appearance of the building will weather and mellow with time.

18. Demolishing the appeal building would not return the land to open countryside but would form a more open courtyard between buildings where domestic activities, including vehicle parking may already occur.

19. The Council indicated that, should the notice be upheld and the building demolished, it would not object to the appeal site being included within the curtilage of an adjacent dwelling. But, that would also result in domestication of the character of the land albeit that a planning permission for such use could control erection of ancillary residential buildings.

20. From the Appellant's evidence, when conversion works started it was discovered that, unlike the other Mount Farm buildings to be converted, the Haybarn had no proper foundations but merely shallow courses of brick laid directly onto the earth. When attempts

to underpin the building started it unexpectedly substantially collapsed. That event was not envisaged by either the Appellants or the Council when permission to convert the building to a dwelling was granted. Although the Council claimed that it had no independent verification of the circumstances of the barn's collapse I see no reason to doubt the Appellants' own evidence on that point. That building collapse also required some modifications to the original farmhouse which was also affected. Those modifications were granted planning permission and have now been implemented resulting in the farm house now being detached from the appeal building.

21. 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.

22. Two interested persons, Mr R Chell and Mrs J Bennet gave evidence that they had known the Mount Farm site for many years from its days as a working farm. In their view, the appeal site now appears little different from what it always did save for the fact that unsightly buildings have been demolished and what had become a dilapidated group of buildings now looks much tidier. They further indicated that the former Haybarn once had a part residential use which supports the Appellants' evidence of wiring, a domestic fireplace and a cooking range in the former building. I also give some weight to the 12 letters, the petition of support signed by about 70 persons and the views of the Hopton and Coton Parish Council in favour of the proposal. It demonstrates that, in this case, local opinion does not see the appeal building as harming the countryside or changing the long standing appearance of Mount Farm, except for the better.

23. In terms of sustainability I see no reason to question the Council's view that a single dwelling would contribute little to rural regeneration. Nor is the site within convenient walking distance of town centres, employment areas or schools. And, the bus service, although providing pubic transport into Stafford at the beginning and end of a normal working day, is infrequent. However, those conditions are the same as if the 2002 planning permission had been implemented.

24. Demolishing the appeal building would also cause the Appellants real financial hardship. Whilst that consideration alone, especially in the case of a permanent building, would not justify harmful new residential development in the countryside, in this case, it does add some weight to the special circumstances, allowed for by SP Policy H11, I have identified in terms of the impact of the building in the countryside.

**Conditions**

25. The Council indicated that any permission should include conditions to restrict permitted development rights for extensions or outbuildings on the appeal site to prevent the formation of an unacceptably large dwelling, or visually intrusive outbuildings in the

countryside. The Appellants indicated willingness to accept such conditions. In my opinion, a suitable condition is justified for the reasons given by the Council and I will attach such a condition accordingly.

26. The Appellant also indicated willingness to accept conditions requiring replacement roof tiles and treatment of external brickwork, in accordance with a scheme to be agreed, if considered necessary to change the external appearance of the appeal dwelling. For the reasons I have given I do not consider such conditions to be necessary.

**Conclusions**

27. I conclude that the proposal would not harm the character and appearance of the countryside. Furthermore, it would comply with the special circumstances allowed for within the provisions of SP Policy H11. For the reasons given above and having regard to all other matters raised, I conclude that the appeals should succeed on ground (a) and planning permission, for the development in the corrected allegation, will be granted.

**Human Rights**

28. The Appellants Mr Robert Stephen James and Mrs Susan Mary James made reference to The Human Rights Act 1998 and the European Convention Rights it incorporates. As I have decided to allow the appeals subject to conditions which addresses the concerns raised I do not address the question of whether the decision would result in a violation of their rights.

**Formal Decisions**

29. I direct that the enforcement notices be corrected by the deletion from paragraph 3 of the word "building" and the substitution of the words "building for use as a dwelling house".

30. Subject to these corrections I allow the appeals, and direct that the enforcement notices be quashed. I grant planning permission, on the applications deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the erection of a building for use as a dwelling house on the land shown cross hatched black on the plan annexed to the notice at The Haybarn, Mount Farm, Hopton, Staffordshire ST18 0AH, subject to the following conditions:

    1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no development within Schedule 2, Part 1, Classes A to E shall be carried out without the further express permission of the local planning authority.

*Francis Farrimond*

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

| | |
|---|---|
| Mr Niall Blackie | Solicitor Advocate, Manby & Steward, LLP, Blunt House, Hall Court, Hall Park Way, Telford, TF3 4NQ. |
| He called | |
| Mr Robert James | Appellant and Partner in RSJ Construction. |
| Mr graham Fergus BA(Hons) MRTPI | |

FOR THE LOCAL PLANNING AUTHORITY:

| | |
|---|---|
| Mr Stephen Peatfield | Solicitor for Stafford Borough Council. |
| He called | |
| Mr Alan Lynch MA DipTP MRTPI | Planning Officer, Stafford Borough Council. |

INTERESTED PERSONS:

| | |
|---|---|
| Mrs J Bennet | Local resident, Old Hall, Hopton, Stafford, ST18 0AH. |
| Mr R Chell | Representative of The English Parliamentary Party and local resident, Parkfield House, Parkfield Business Park, 1 Park Street, Stafford. |

DOCUMENTS

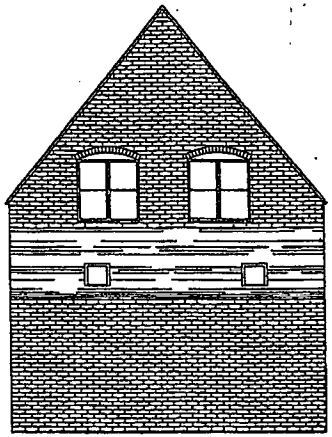
| | | |
|---|---|---|
| Document | 1 | List of persons present at the inquiry. |
| Document | 2 | Copy of Council's letter of notification of appeals, dated 9 August 2006, and list of persons notified. |
| Document | 3 | Appendices, A-J, attached to Mr James' proof of evidence. |
| Document | 4 | Appendices, A-X, attached to Mr Fergus' proof of evidence. |
| Document | 5 | Appendices, 1-10, attached to Mr Lynch's proof of evidence. |
| Document | 6 | Statement of Common Ground. |
| Document | 7 | Conditions suggested by Council. |

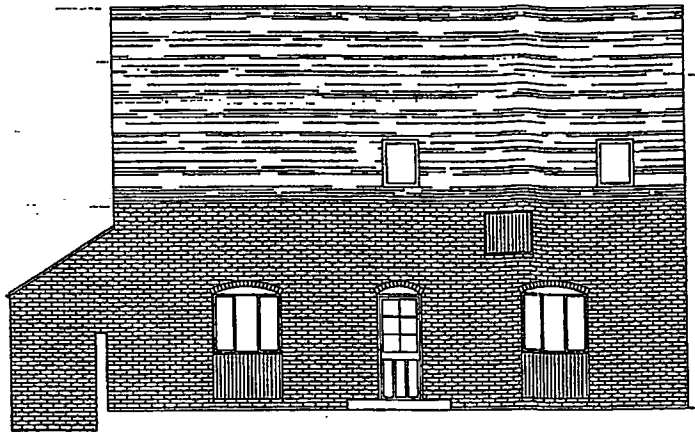
PLANS

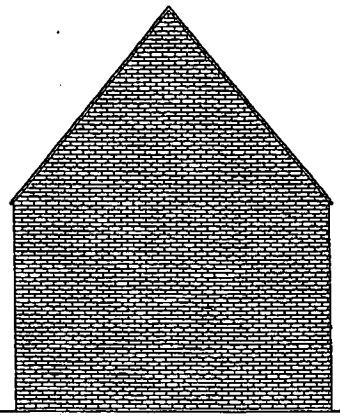
| | | |
|---|---|---|
| Plan | A | The notice plan, appeals Ref: APP/Y3425/C/06/2005797& 2005806. |
| Plan | B | The notice plan, appeals Ref: APP/Y3425/C/06/2012607 & 2012612. |

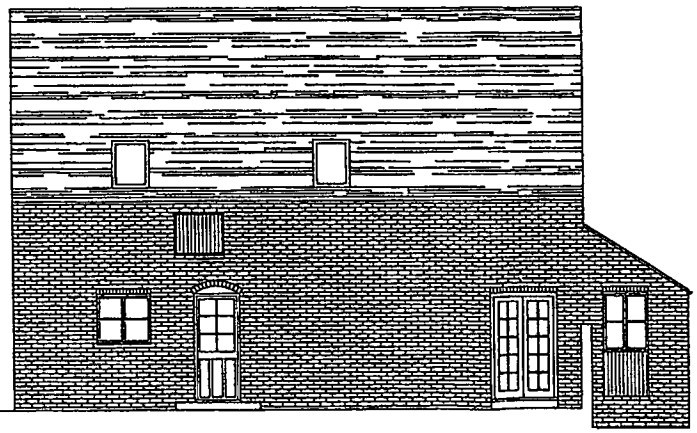
PHOTOGRAPHS

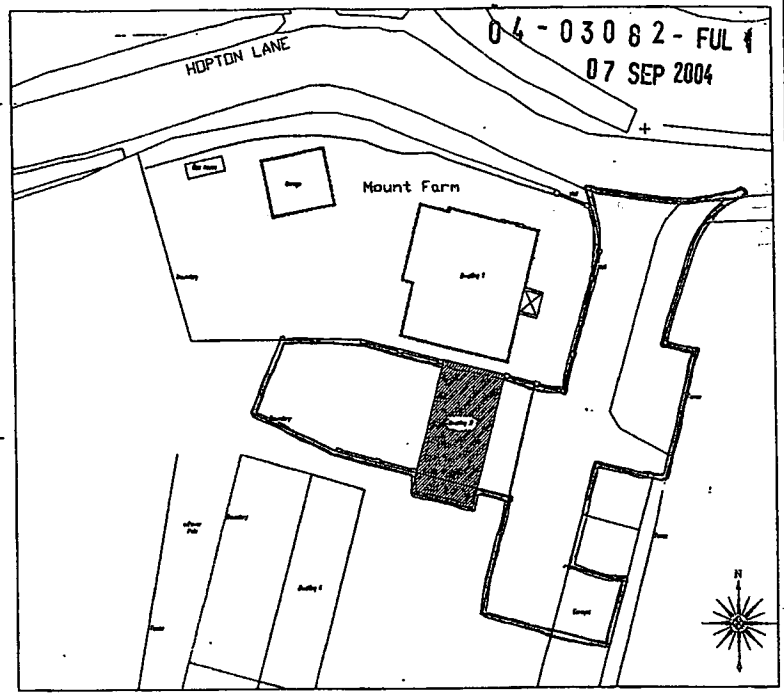
| | | |
|---|---|---|
| Photo | 1 | Set of photos (8) of former Haybarn, current dwelling and other buildings at Mount Farm, Appendix C to Mr James' proof of evidence. |
| Photo | 2 | 2 photographs of building at Marston Farm, Stafford, Appendix W, to Mr Fergus' proof of evidence. |
| Photo | 3 | Set of photos (15) of former Haybarn, current dwelling and other buildings at Mount Farm, Appendices 3-6 to Mr Lynch's proof of evidence. |









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STAFFORD BOROUGH COUNCIL

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Reference 03082

Dated 24.11.04

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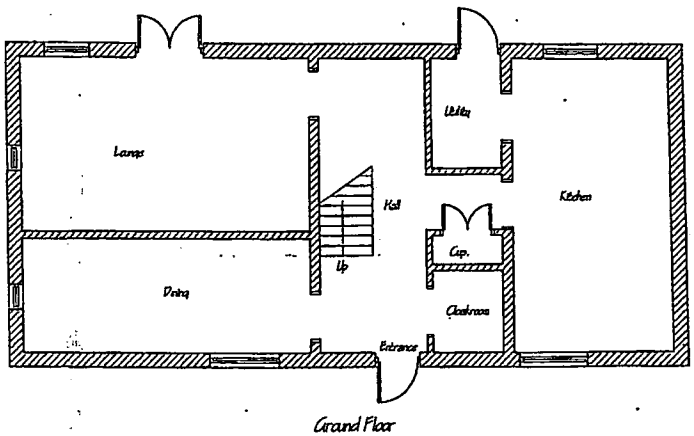
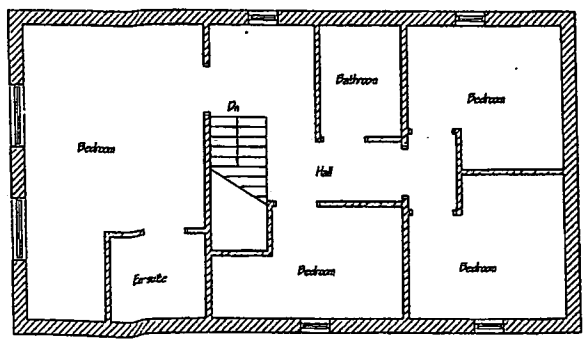



Ground Floor




First Floor

PSP Surveys / Planning Drawings Services using Autodesk. AutoCAD

JOB: Mount Farm, Hopton

DRAWING: Floor Plans of Dwelling No 2

| SCALE | DATE | SET | DRAWING NO. |
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| 1:100 | Apr 04 | | |

# 04/03082/FUL

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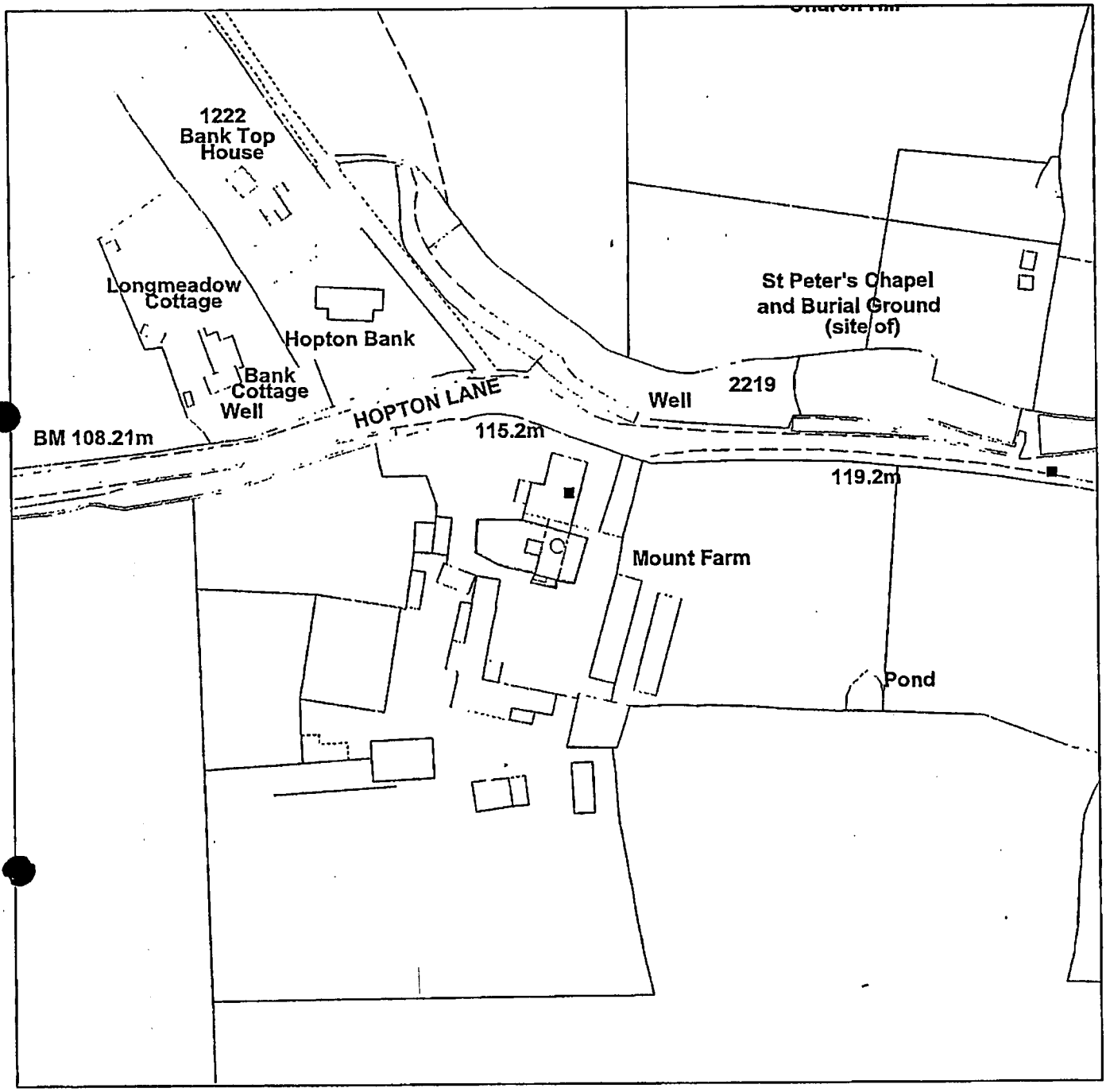


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|---|---|
| Organisation | Planning Services |
| Department | Technicians |
| Comments | Location Plan |
| Date | 08 September 2004 |
| SLA Number | 100018205 |

