

Application No: **10/4897N**

Location: **Henhull Bridge Farm, Millstone Lane, Hurleston, Nantwich, CW5 6AG**

Proposal: **Erection of New Dwelling (Unit 3)**

Applicant: **Mr G A Newsome**

Expiry Date: **14-Feb-2011**

Ward **Cholmondeley**

SUMMARY RECOMMENDATION: Refuse

MAIN ISSUES:

- Principle of Development
- Material Considerations
- Design
- Amenity
- Other Factors

REFERRAL

This application was to be dealt with under the Council's delegation scheme. However, Councillor Hollins has requested it be referred to Committee for the following reason - *This is not a new dwelling, planning permission was granted in 2007 for these barn conversions. Unit 3 building of the original permission was of a different construction to the rest of the barns and in order to make a safe conversion a reconstruction on the original footprint had to be carried out.*

DESCRIPTION OF SITE AND CONTEXT

The application site is located within the parish of Henhull to the north west of Nantwich. The application site is located in an isolated but prominent position and is bounded by native hedgerow, post and rail fence and walls. To the south of the site is the A51 (Chester Road) and to the east is the Shropshire Union Canal. The site comprises of a 2 storey detached farmhouse constructed out of facing brick under a slate roof. Located adjacent to the farm house are a two storey barn and a partially constructed barn (which is the subject of this application). The application site is located wholly within the open countryside.

DETAILS OF PROPOSAL

This is a full application for the erection of a new dwelling (Unit 3) at Henhull Bridge Farm, Millstone Lane, Hurleston, Nantwich. The proposal is to reconstruct the building, which has been completely demolished and at the time of the site visit was partially reconstructed. The

partially rebuilt building has been constructed on the same footprint. However, the proposed building will incorporate accommodation over two levels and will increase the eaves/ridge height and decrease the floor level and will incorporate numerous alterations to the external fenestration.

RELEVANT HISTORY

P01/0031 – Conversion of Barn to form Two Residential Units – Refused – 3rd April 2001

P06/1230 – Conversion of Outbuilding to Three Dwellings with Associated Landscaping, Car Parking and New Access and Demolition of Two Agricultural Buildings – Withdrawn – 19th December 2006

P07/0321 – Conversion of Outbuildings to Three Dwellings with Associated Landscaping, Car Parking and New Access and Demolition of Two Agricultural Buildings – Approved with Conditions – 2nd May 2007

POLICIES

Local Plan Policy

BE.1 (Amenity)

BE.2 (Design Standards)

BE.3 (Access and Parking)

BE.4 (Drainage, Utilities and Resources)

BE.5 (Infrastructure)

RES.5 (Residential Development in the Open Countryside)

RES.10 (Replacement Dwelling in the Open Countryside)

NE.2 (Open Countryside)

NE.16(Residential Re-use of Rural Buildings)

National Policy

PPS1 – Delivering Sustainable Development

PPS3 – Housing

PPS7 – Sustainable Development in Rural Areas

CONSIDERATIONS (External to Planning)

Environmental Health (Land Contamination): No objections subject to a contaminated land condition.

Environmental Health: No objections subject to conditions in respect of hours of construction and piling.

United Utilities: No objection

Highways: No comments received at the time of writing this report

VIEWS OF THE PARISH / TOWN COUNCIL

No representations received at the time of writing this report

OTHER REPRESENTATIONS

No representations received at the time of writing this report

APPLICANT'S SUPPORTING INFORMATION

Design and Access Statement

- The site is located within the parish of Henhull to the north west of Nantwich;
- The site has a gross site area of 1.03 Ha (2.54 acres);
- An extensive hedge that protects the site from the A51 road forms the southern boundary of the site;
- Established fences, hedges, walls and the existing agricultural buildings define the other site boundaries;
- The site has previously been used as a farm, but although some of the sheds have until recently been used for storing livestock, the property is now a private residence. The remaining barns and agricultural buildings are now either vacant or used for the storage of machinery;
- The dominant building on the site is the original farmhouse, which has been carefully renovated in recent years to create a substantial family dwelling;
- The original brick barns for the farm are located adjacent to the farmhouse and are set out in an L-shaped form (Units 1 and 2) with a further detached barn to the east of the main group (Unit 3);
- The site was the subject of a planning application for the conversion of outbuildings to three dwellings with associated landscaping, car parking and new access, demolition of two agricultural buildings and the erection of a garage and stable block to serve the existing dwelling under planning reference P07/0321. This application was approved by the former Crewe and Nantwich Borough Council 2nd May 2007;
- Works on the final barn conversion (Unit 3) are now underway and it is this element of the project which is the subject of this application;
- The conversion of Unit 3, which due to its original construction make up as a more recent steel framed building, has presented different challenges to our client than the traditional construction encountered with Units 1 and 2;
- Although the general conclusion of the structural investigations demonstrated that the development as a whole was suitable for conversion, the conversion of Unit 3 was to be more complex;
- The project has been the subject of a Building Regulations Application and been inspected regularly by the Council's Building Control staff;
- As work progressed on Unit 3, it has become more apparent that in order to ensure a safe construction method and achieve the level of insulation and stability for the building, it has been necessary to rebuild the structure;
- It is accepted this reconstruction of a relatively small element of the overall project is technically at odds with the requirements of policies NE.2 and NE.16, this has ensured that the quality of the build will be of a high standard as is the case of the other completed buildings within the development;

- The converted barns will create family 3 bedroom accommodation. Units 1 and 2 will be arranged on 2 no. floors, whereas Unit 3 will now have ground floor accommodation and bedrooms within a loft space area, creating a 4 bedroom property;
- The reconstructed Unit 3 will have a finished floor level of 50.30m which is 0.29m below the approved finished floor level of 50.59m. The proposed ridge height of Unit 3 will be 56.49m in comparison to the approved ridge height of 55.75m. Although it is accepted that the revised ridge height is different to the approved height, it is our view that the 0.74m will have no detrimental impact on the open countryside;
- The proposed fenestration of Unit 3 is similar to that of the original building and in addition at first floor level, conservation style rooflights have been introduced so as to ensure that the traditional barn style is retained.

OFFICER APPRAISAL

Principle of development

The main issue in the consideration of this case is the acceptability, in principle, of the proposed development. The applicant concludes in the Design and Access Statement that the proposal is compliant with the requirements of policy NE.16 of the Local Plan which deals with conversions of rural buildings to residential use.

However, due to the extent of the rebuilding, the development is no longer a conversion scheme, and effectively now is tantamount to the erection of one new dwelling within the Open Countryside. Consequently, it is not considered that policy NE.16 should be applied and the proposal must be determined as a new dwelling in the Open Countryside rather than for a conversion.

Notwithstanding this point, policy NE.16 states that conversions will only be permitted where the building is of permanent, substantial and sound construction and, if it is in the open countryside, is proposed for re-use without major or complete reconstruction. Therefore, even if it were considered that NE.16 was applicable, given the extent of the reconstruction required, the proposal would fail to comply with the requirements of this policy (see Section Below).

In considering the application against Policy RES.10 of the Local Plan this states that a new dwelling will only be permitted (amongst other criteria) if the existing dwelling has been occupied within the last four years and is substantially intact and the replacement dwelling is not materially larger than the dwelling it replaces. It is considered that the proposal fails to comply with the above policy as the building has never been occupied and has been completely demolished and is now partially rebuilt. Furthermore, according to the submitted plans the proposed building will be materially larger than the one which it replaces as the floor level will be reduced and the eaves/ridge increased.

Policy RES.5 and NE.2 of the local plan states that in the open countryside new dwellings will be restricted to those that involve the infilling of a small gap with one or two dwellings in an otherwise built up frontage or are required for a person engaged full time in agriculture or forestry.

The application site is located on the northern side of the A51 and the building is well set back from the A51 by approximately 38m. The application site is accessed via a private access road. The application site is in a prominent but isolated location and the nearest residential property is located approximately 115m away to the east. Finally, the unit in question is located on the end of the existing former farm complex and the loss of this unit would not leave a gap in the existing built form, which may otherwise be to the detriment of the existing buildings. Therefore, as the proposed dwelling is not intended for an agricultural worker nor is located in a built up frontage the development is, therefore, contrary to policy and represents a departure from the Development Plan.

Consequently, there is a presumption against the proposal, under the provisions of sec.38(6) of the Planning and Compulsory Purchase Act 2004 which states that planning applications and appeals must be determined "*in accordance with the plan unless material considerations indicate otherwise*". The application turns, therefore, on whether there are any other material considerations of sufficient magnitude to outweigh the Development Plan presumption against the development.

Material Considerations

The grant of planning permission in May 2007 for the conversion of the outbuildings to form three residential units was subject to a number of conditions. According to the decision notice condition no. 20 explicitly stated:

'This permission shall be for the conversion of the existing buildings and shall not imply approval or otherwise for the demolition and rebuilding of areas of brickwork unless specifically identified in the submitted application. Any areas of demolition and rebuild which appear necessary as work proceeds, shall first be notified in writing to the Local Planning Authority and written approval obtained before demolition commences'.

The Structural Engineer's report relating to P07/0321 (produced by John Naughton Associates dated 25th January 2007) has the following conclusions and recommendations in relation to Unit 3:

- *The building has an asbestos cement roof with support to the purlins provided by steel trusses. We envisage the roof will be replaced with a new slate roof supported either upon a rafter and purlin construction or close centred timber trusses spanning from side to side.*
- *The side walls are in 110mm brickwork with steel columns at truss positions. It will be necessary to construct an inner leaf and we envisage a blockwork inner leaf would be built to support the roof structure and also to provide a cavity, insulation and lateral restraint etc. The foundation for the inner leaf should underpin the external brickwork; and*
- *The building has suffered from movement and it will be necessary to rebuild the rear wall and gable section of the front wall. Consideration should also be given to rebuilding the rearmost two panels of brick work on the left hand side elevation.*

It is the applicant's case that as work progressed on Unit 3, 'it became more apparent that in order to ensure a safe construction method and achieve the level of insulation and stability for the building, it has been necessary to rebuild the structure'. The applicant contends that the

conversion of this unit was more complex than for Units 1 and 2 and has been done in order to comply with Building Regulations. However, this stance seems to contradict the final conclusions in the John Naughton Structural Engineers Report which states:

'The barns will need considerable upgrading in respect to insulation, ventilation etc. in order to comply with Building Regulations requirement, however, we could see no reason to consider the buildings cannot be retained and converted to dwelling use'.

Nevertheless, as previously stated condition no. 20 which was attached to P07/0321 was clear and unambiguous. Unit 3 was to be constructed in accordance with the Structural Report and if any additional areas of demolition and rebuilding were necessary details should have been submitted in writing and approved by the Local Planning Authority. However, the applicant demolished the whole of the building and at no point submitted any additional information relating to the structural viability of the building. Therefore, it is clear that the total demolition of Unit 3 and its subsequent rebuild is contrary to Policy NE.16 as the proposal involves major and complete reconstruction.

Design

Development Control guidance advocated within PPS 1 places a greater emphasis upon Local Planning Authorities to deliver good designs and not to accept proposals that fail to provide opportunities to improve the character and quality of an area. Furthermore, if an agricultural building is considered to be a viable structure upon which to base a conversion, the acceptability of the actual details of how that conversion would be achieved remains a further hurdle for applicants. The basic test is to ask whether the details of conversion would so erode the characteristics of the existing building so as to permit what would be tantamount to a new dwelling in open countryside. This test has the support of ministerial policy.

Where a barn is in reasonable condition the normal grounds for objection to the details of a barn conversion include

- a) The building would have to be extended to such an extent that the intrinsic character of the existing building would be lost, or a structure of excessive size created.*
- b) Multiple subdivision of the interior of the barn would harm the character of internal features, especially roof structures. This objection is accentuated if a barn is listed.*
- c) The external appearance of the existing building would be so altered by the insertion of additional openings, dormer windows or lights in the roof, the replacement of materials, or the removal/insertion of other design features, that the result has little resemblance to a former agricultural building, at best appearing to be a house which used to be a barn, at worst a suburban dwelling.*
- d) The external manifestations of the use such as a proliferation of boundary fences, garden equipment, parking areas etc. would be harmful to rural character.*

The building will be constructed on the same footprint as the demolished unit and the width and depth of the building will remain the same. However, according to the submitted plans, the reconstructed Unit 3 will involve increasing the eaves height of the proposed building by approximately 250mm and the ridge height will increase by a further 700mm. Furthermore, the building will have a finished level of 50.30m which is 0.29m below the approved finished floor level of 50.59m. The applicant contends that these alterations will have no detrimental

impact on the open countryside. In addition to the above, the applicant is proposing to alter a number of the approved apertures, for example, increasing the size of windows and converting some windows into doors. According to the approved plans there were no roof lights. However, this proposal seeks planning permission for 16 no. roof lights (8 no. rooflights in each roof plane), which the applicant states will be conservation style.

According to the approved plans all the accommodation for Unit 3 was to be all on one level and included 3 no. bedrooms two with en-suite facilities, a utility room, a hall, a kitchen and dining room, a bathroom and a lounge. The current proposal provides accommodation over two levels (hence the increase in eaves/ridge height and decrease in floor level) and will incorporate a study, a lounge, a dining/sitting room, a hall, a w.c., a store room, a kitchen and a utility room at ground floor level. The first floor accommodation will comprise of 4 no. bedrooms two with en-suite bathrooms (and will also include a dressing area) and a bathroom.

It is considered that the significant increase in eaves/ridge height of the proposal coupled with the large number of roof lights will appear very stark and will be visible from a number of short and long distance views and will appear as an incongruous and alien feature within the landscape, and as such will have a significant detrimental impact on the character and appearance of the open countryside.

Amenity

There is only a distance of approximately 5m separating the two units (Unit 2 and Unit 3). According to the submitted plans elevation 8 of Unit 2 faces elevation 4 of Unit 3. However, the agent acknowledges that there is a very small separation distance between the two units. A number of the windows on these two elevations are for non habitable rooms or secondary windows. The remaining windows due to their juxtaposition do not directly overlook each other. Furthermore, many barn conversions have similar problems and residents living in the converted barns have to be aware that they may not have same level of privacy as a resident in another type of housing would expect to receive. It is considered that the proposal broadly complies with policy BE.1 (Amenity).

Other Material Considerations

In considering the weight to be attached to the matters of exceptional circumstances and harm, regard should be given to previous appeal cases where Inspectors have considered similar issues.

Of relevance to this case is an appeal decision, dated 26 July 2004, which relates to a development in the Stockport Green Belt whereby planning permission had been granted for the conversion of an existing barn to a dwelling. When works began on the building they did not comply in all respects with the planning approval, and at the request of the Council work ceased on the property. The roof had been removed from the building and much of the rear wall. The Council was of the opinion therefore that the planning permission could not be implemented and what the appellants were proposing was tantamount to a new dwelling in the Green Belt. The Inspector opined that the appellant was seeking to provide a dwelling practically identical to that previously permitted and that the only material difference was that more reconstruction work would be required. The end result would still be a modest three

bedroom cottage, built in stone and with a stone flagged roof and retaining some characteristic features of the original barn.

The appeal turned on whether the new scheme would constitute inappropriate development in the Green Belt and if so whether there were any very special circumstances which warranted an exception to the severely restrictive Green Belt Policies.

The Inspector acknowledged that the proposal as it stood did not accord with the requirements of PPG2 i.e. it would not be properly associated with agriculture or forestry nor would it be essential for outdoor sport, recreation or a cemetery or any other predominantly open use, nor could the development be classed as infilling as it did not lie within an existing village boundary or within an area where there was a ribbon form of development. Therefore, he opined that the scheme would constitute inappropriate development within the Green Belt. However he then turned to consider whether or not there were very special circumstances which would override the strong policy objections.

He considered the relevance of the extant planning permission and whether, if permitted to continue, the ultimate development would be significantly different to that approved. He concluded that it would not because materials were to be re-used, it would be built in stone and have a stone flagged roof and retain some of the characteristic features of the original barn. The Inspector concluded that all of those matters constituted sufficiently special circumstances to warrant an exception to the severely restrictive Green Belt Policies.

A further appeal decision, whereby similarities may be drawn with this proposal relates to a site which lies in the North Cheshire Green Belt within the administrative area of the former Macclesfield Borough Council.

Planning permission had been refused for the conversion of the barn to residential accommodation in 1992. However, in 1993 planning permission was granted for the conversion. A subsequent application was approved to make alterations and additions to the barn.

When work commenced on the development, parts of the east wall collapsed. The applicant was advised by her agent that the end gable walls would have to be removed and rebuilt on the existing foundations. The Local Planning Authority was of the opinion that these works would require a further planning approval. An application was subsequently withdrawn and work restarted on the building. Consequently an enforcement notice was issued together with a stop notice in 1994. The withdrawn application was re-submitted and an appeal was lodged against the enforcement notice. At appeal the enforcement notice was upheld and the Section 78 appeal was dismissed.

An amended application was submitted, this too was refused and dismissed at appeal. A further application was submitted and refused, a subsequent appeal was withdrawn.

In 2000 the Local Planning Authority resolved to use its powers to enter the site and undertake works of demolition in default. The applicant brought proceedings of judicial review against this decision claiming that demolition would be unlawful under the Human Rights Act 1998 and was an unjustified deprivation of property contrary to Article 1 of the First Protocol to the convention. Permission was initially refused by the High Court but subsequently granted by the Court of

Appeal. Whilst the judicial review was pending a further application for the retention of the buildings was submitted. Although the Council considered the proposal to be inappropriate development in the Green Belt it resolved to approve the application, subject to it being referred to the Secretary of State as a possible call-in, on the basis of very special circumstances, these were identified as being:

- i) That planning permission had originally been granted for the conversion and change of use of a barn for residential use. There was therefore no objection to the use of the site for a dwelling.
- i) There had been some technical breaches of policy and guidance in respect of the criteria for the re-use of the buildings in the countryside as set out in the development plan and Government advice. The structural report accompanying the application had not been as comprehensive as would now be expected and to which appropriate planning conditions might have been attached. The likelihood of a similar situation arising had therefore been significantly reduced.
- ii) The principle of development on this site carried the support of the Parish Council and the local community.
- iii) The building is a possession as defined by the Human Rights Act 1998. The applicant is entitled to the peaceful enjoyment of that possession. If planning permission were further refused then having regard to the history of this site including potential demolition of the building, there is a risk that the applicant's Human Rights would be breached.

In deciding this application the Secretary of State upheld the very special circumstances. Members should note, however, that the development had already been carried out and the property was occupied; therefore in carrying out works to demolish the property the Local Planning Authority would have been depriving the occupiers of their home. This is not the same situation as that now under consideration. The Secretary of State also made the distinction between the monetary loss, which he did not consider sufficient to justify granting planning permission, and the loss of a home, which he did.

Another Appeal Decision from the Macclesfield area, which was also located in the Green Belt where the Inspector determined that the resulting building would not be materially different in size, position or appearance from the conversion. The building was found to form part of a traditional group of buildings with the adjacent farmhouse at a nearby road junction and there would be material harm if the integrity of the farmstead was lost. In addition, the landscaping proposed would also make a modest but positive contribution to the character and appearance of the area. A structural survey and advice from the Council's Building Control Officer indicated that the building was capable of conversion without major or complete rebuilding. Based on the above the Inspector concluded that although a new dwelling had been created, its impact on the area was an improvement and sufficient to outweigh the harm to the green belt from inappropriate development.

In a similar case at Vale Royal, an enforcement notice required the demolition and removal of materials for an unauthorised rebuilding of a former barn which had permission for conversion to a dwelling. Upon commencement of work the building became unstable and most of it had to be demolished. Permission to erect a new dwelling was refused and this was also appealed. The site lay within the green belt. Major rebuilding work involving more than 50% of the structure would be required and thus failed a local plan policy. Rebuilding was not justified

on the basis that a barn had once existed on the site. The appellant had expended £165,000 to date but this did not constitute a very special circumstance to outweigh harm to openness. Either rebuilding or new-build constituted inappropriate development and permission was refused.

The issue in question, therefore, is whether, in the light of the case law described above, the circumstances set out in the applicant's supporting statement are sufficiently exceptional to justify a departure from development plan policy.

Whilst the current application site at Henhull Bridge Farm does not lie within the Green Belt, it does lie within the Open Countryside where there is a presumption against inappropriate development. The proposal is similar to the appeal cases in that it does not comply with any of the criteria for acceptable residential development in the Open Countryside as detailed in Local Plan policy. Furthermore, the proposed new unit would not be identical to the unit which it was replacing, due to the increase in eaves/ridge height, reduction in floor levels and alterations to the elevational treatment. A further material consideration is that a comprehensive structural report had been submitted with the original application. Whilst it is accepted that the works required to convert Unit 3 were more complex, the report clearly stipulates that 'we could see no reason to consider the building cannot be retained and converted to dwelling use'. No additional structural reports have been submitted to the Council stating why the building had to be demolished, which would have been an important material consideration and there is no evidence that the applicant engaged a structural engineer prior to commencing work.

The most important point to be drawn from the Stockport and two Macclesfield decisions quoted above is that in all three examples the Inspectors granted permission because the proposed dwellings were identical replicas of previously permitted development. No harm arose. However, this would not be the case at Henhull Bridge Farm. However, as can be seen from the Vale Royal case, other Inspectors have taken a different approach and held to the strictly policy based view, that the rebuilding constitutes inappropriate development. These decisions, therefore, are not binding precedents. They merely indicate an approach which another Inspector might take if a decision to refuse this application went to Appeal.

It is considered that there are no exceptional material considerations to outweigh the policies in the Local Plan.

CONCLUSIONS AND REASON(S) FOR THE DECISION

The application site is located wholly within the open countryside where there is a presumption against inappropriate forms of development. According to the applicant the building was in a poor state of repair and in order to comply with Building Regulations needed to be demolished. However, the applicant has failed to submit any further structural information as to the necessity to completely demolish this building. Whilst it is noted that the new building will be constructed on the same footprint, the eaves/ridge height of the proposal will be significantly higher and there will be an excessive number of roof lights on both roof planes. It is considered that the proposal will appear very stark and will have a detrimental impact on the character and appearance of the open countryside.

RECOMMENDATION

Refuse for the following reasons:

The application site is located in the open countryside where there are very strict controls over the building of new dwellings. The proposal is contrary to Policies RES.5 (Housing in the Open Countryside), RES. 10 (Replacement Dwellings in the Open Countryside) and NE.2 (Open Countryside) of the Borough of Crewe and Nantwich Replacement Local Plan 2011 in that it does not involve the infilling of a small gap with one or two dwellings in an otherwise built-up frontage, the new dwelling is not a replacement for a dwelling occupied in the last 4 years and the new dwelling is not required for a person engaged full time in agriculture or forestry. The proposal to build a new dwelling in the countryside is also in conflict with national policy contained in PPS7: Sustainable Development in Rural Areas

The proposed new dwelling would be materially larger than the barn it would replace with a significant increase in the eaves/ridge height which coupled with the proposed large number of rooflights would result in the new building having a very stark appearance and being visible from a number of short and long distance views. It would appear as an incongruous and alien feature within the landscape, and as such the proposal would have significant detrimental impact on the character and appearance of the countryside. The proposal fails to comply with policy BE.2 (Design Standards) of the Borough of Crewe and Nantwich Replacement Local Plan 2011.

Location Plan: Cheshire East Council Licence No. 100049045

