

Application No: 12/0325N

Location: The Printworks, CREWE ROAD, HASLINGTON, CREWE, CHESHIRE, CW15RT

Proposal: Proposed replacement dwelling for previously approved residential conversion

Applicant: Nigel Hartley

Expiry Date: 16-Mar-2012

SUMMARY RECOMMENDATION:

- **Approve subject to conditions**

MAIN ISSUES

- **Principles of Development**
- **Amenity**
- **Highways**
- **Protected Species**
- **Design**
- **Trees and Landscape**

1. REFERRAL

The proposal has been referred to Southern Planning Committee because it constitutes a new dwelling the Open Countryside, as defined in the Crewe and Nantwich Replacement Local Plan and is therefore a departure from the statutory Development Plan.

2. SITE DESCRIPTION AND DETAILS OF PROPOSAL

The application site comprises a cleared site formerly associated with no. 204 Crewe Road, Haslington, a large detached dwelling and coach house fronting Crewe. The dwelling and application site share a vehicular access from Crewe Road which subdivides within the curtilage of the property. The site was formerly occupied by a commercial building, which was located to the rear of no. 204, approximately 105m back from Crewe Road. This has recently been demolished and foundations laid for a new building. Two brickwork panels of approximately 2m x 2m have also recently been constructed at either side of the site.

The boundaries within the site are defined by established planting predominantly with trees throughout the site, although a significant number of trees have been removed as part of the recent works. The site falls within the open countryside as designated in the Local Plan.

The surrounding area is characterised by residential properties set within large gardens. The site is within Open Countryside, as defined in the local plan, albeit only a short distance outside the Haslington Settlement Boundary.

Planning permission was granted on appeal for the conversion the recently demolished commercial unit into a separate dwelling unit. (Application P07/1401 refers). The proposal included a porch extension to the south elevation, two additional windows to the west elevation and amendments to existing openings within the elevations. A revised proposal which included more extensive alterations to the building was subsequently granted planning permission in 2010, under application reference 10/4295N.

Following commencement of development, two 2m x 2m panels were cut out of the brickwork to either end of the building and rebuilt, following which the remainder of the original building was demolished and all that remains on site are the two recently reconstructed panels at each end of the building. It is the applicant's intention to rebuild the remainder of the building to form a dwelling, identical in external appearance to the previously approved conversion.

The applicant was under the misapprehension that the reconstruction of 2 panels constituted "repair and maintenance" of the original building, and that because these were retained, whilst the remainder of the building was demolished and reconstructed, the proposal would still represent a conversion of the original building. However, the legal position in such circumstances, confirmed in the courts in *Hadfield v SOS 19/6/1996*, is that any planning permission is thereby lost and a fresh permission is needed for any reconstruction. This application, therefore, is for a new dwelling to replace the building which has been demolished.

3. PREVIOUS RELEVANT DECISIONS

P06/1145	Conversion of Existing Office Block to One Dwelling. Refused 29 th November 2006.
P07/1401	Conversion of Existing Workshop/Offices (B1) to form Single Dwelling – Appeal Allowed
10/4295N	Conversion of Printworks to a Residential Building with Minor Extensions – Approved 23 rd December 2010

4. PLANNING POLICIES

The development plan includes the North West of England Plan Regional Spatial Strategy 2021 (RSS) and the Borough of Crewe and Nantwich Replacement Local Plan 2011 (LP).

The relevant development plan policies are:

Regional Spatial Strategy

DP1 (Spatial Principles)

DP2 (Promote Sustainable Communities)

DP4 (Make the Best use of Existing Resources and Infrastructure)
DP5 (Manage Travel Demand)
DP7 (Promote Environmental Quality)
DP8 (Mainstreaming Rural Issues)
DP9 (Reduce Emissions and Adapt to Climate Change)
RDF2 (Rural Areas)
L5 (Affordable Housing)
MCR4 (South Cheshire)

Cheshire Replacement Waste Local Plan

Policy 11A (Development and Waste Recycling)

Borough of Crewe and Nantwich Replacement Local Plan 2011

BE.1 (Amenity)
BE.2 (Design Standards)
BE.3 (Access and Parking)
BE.4 (Drainage, Utilities and Resources)
BE.6 (Development on Potentially Contaminated Land)
TRAN.9 (Car Parking Standards)
NE.2 (Open Countryside)
NE.5 (Nature Conservation and Habitats)
NE.9 (Protected Species)
RES.5 (Housing in the Open Countryside)

Other Material Considerations

PPS1 (Delivering Sustainable Development)
PPS3 (Housing)
PPS7 (Sustainable Development in Rural Areas)
PPS9 (Biodiversity and Geological Conservation)
PPG13 (Transport)

5. OBSERVATIONS OF CONSULTEES

Highways

No objection

Environmental Health

Make the following comments.

- The hours of construction of the development (and associated deliveries to the site) shall be restricted to:
 - Monday – Friday 08:00 to 18:00 hrs
 - Saturday 09:00 to 14:00 hrs
 - Sundays and Public Holidays Nil
- Should there be a requirement to undertake foundation or other piling on site it is recommended that these operations are restricted to:
 - Monday – Friday 08:30 – 17:30 hrs

- Saturday 09.00 – 13:00 hrs
- Sunday and Public Holidays Nil
- The application area has a history of printworks use and therefore the land may be contaminated.
- The application is for a new residential property which is a sensitive end use and could be affected by any contamination present.
- Information relating to contaminated land was submitted under previous application number 10/4295N and the condition was discharged.
- As such, and in accordance with PPS23, this section recommends that the following conditions, reasons and notes be attached should planning permission be granted:
 - Should any adverse ground conditions be encountered during excavation works, all work in that area should cease and this section be contacted for advice.

6. VIEWS OF THE PARISH / TOWN COUNCIL:

Following discussion at a full meeting of Haslington Parish Council on 6th February 2012, it was confirmed that the Parish Council objects to the proposed development of a dwelling in the open countryside, as contrary to policy NE.2. Further the Parish Council agreed to leave the matter as a Planning Officer decision and not request a call in of the application to the Southern Planning Committee.

7. OTHER REPRESENTATIONS:

None received at the time of report preparation.

8. APPLICANT'S SUPPORTING INFORMATION:

- Design and Access Statement.
- Covering letter
- Tree Survey.

9. OFFICER APPRAISAL

Policy Position

The main issue in the consideration of this case is the acceptability, in principle, of the proposed development. Due to the extent of the rebuilding, the development is no longer a conversion scheme, and effectively now is tantamount to the erection of a new dwelling within the Open Countryside.

Policy RES.5 and NE.2 of the local plan state 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.

Given that the proposed dwelling is located to the rear of the site, set back from the site frontage, and the distances to the adjoining properties, it is not considered that the development constitutes infill development of a small gap in an otherwise built up frontage, which would accord with Policy NE.2. As the proposed dwelling is not intended

for agricultural workers 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

According to the covering letter submitted with the application it is the applicant's case that:

“The initial phase of development under the direction of the project manager was to remove the building (apart from two panels of brickwork) and to pour new foundations. It was at this point that the Council became aware of the approach being taken to the development and indicated that, in their view, the original building had been demolished and that a new planning permission would be required since it was no longer possible to convert the original building.

Had the Applicants had any idea that the approach to the development that was being adopted by their project manager might in any way threaten their permission, then, of course, they would never have allowed it to proceed, but they understandably relied upon the advice of their project manager who had been instructed because of his expertise in such matters.....the Applicants have been placed in a potentially catastrophic position by virtue of the decisions and actions of their previous advisors. If no replacement dwelling was permitted on the application site, then, potentially, the Applicant's would lose everything that they have already invested in the site and would be left without the family home that they have been working hard to realise for nearly two years; virtually all of their life savings would be lost..”

Ministerial advice relating to the extent to which personal pleading may be a material consideration is mainly to be found in “The Planning System: General Principles”, which accompanies Planning Policy Statement 1 (April 2005). Para. 21 states that exceptionally the personal circumstances of an occupier, personal hardship, or the difficulties of businesses which are of value to the welfare of the local community, may be material to the consideration of a planning application. It is noted that in such circumstances a permission may be made subject to a condition that it is personal to the applicant. However, the guidance warns that such arguments will seldom outweigh more general planning considerations, which would include the strong presumption against new residential development in the open countryside.

The applicants go on to argue that:

“Notwithstanding the fact that the description on the approval referred to the development as a “conversion”, a close examination of exactly what was approved reveals that it was in fact tantamount to the construction of a new dwelling. A comparison of the original building with that which was approved pursuant to 10/4295N reveals that the two main elevations (north and south) would have been

entirely new because they both incorporated substantial areas of wall forward of the original building line and, where the building line did correspond, the replacement of walls with glazing or the insertion of significant new doors and openings. The shorter east and west elevations could have been retained to a greater extent although the construction of the chimney stack would have involved some demolition; the roof structure would have been entirely new and of a fundamentally different design.....Had every part of the original structure been retained that it was possible to retain, then just 13.3% of the final 'building envelope' would have been 'original', the remainder would, of necessity, have been entirely new. Furthermore, the remaining 13.3% was also to be rendered which would have removed any significance that its retention might, otherwise, have been said to have. It is on the above basis that we conclude that the permission was, in effect for the construction of a new dwelling."

The above approach was also acknowledged to a significant extent within the officer's report relating to the above application where it was noted that the proposals involved major reconstruction, but that this was considered to be justified in these 'exceptional' circumstances.

Given that the approval was in effect for a new dwelling the very small variation in terms of what could conceivably have been retained from the original building is of no material significance and, therefore, conclude that the original permission can still be implemented.The above background must be seen as a material consideration of some significant weight weighing in favour of the grant of planning permission; this was never intended to be a conversion in the normal way of things and what is now proposed is not materially different to that which was granted permission; it would be wrong to place undue weight on the word "conversion" rather than the actual details of the approval."

The legal position is that if a planning permission exists for development, and it has not lapsed because of non-implementation within the statutory time limits the rights conveyed by that permission may be lost if, inter alia, collapse or demolition of an old building being converted for a new use occurs, where retention of the old structure was the justification for the permission. In such cases, as shown in *North Norfolk DC v Long & SOS 10/11/1982*, there is no permission for any reconstruction. The commonest scenario is where barns are being converted to residential or other accommodation. The approach taken in the *North Norfolk* case was confirmed by the case of *Hadfield v SOS & Another 19/6/1996* where permission had been granted for a barn conversion, but it was found that substantial rebuilding was necessary. Here an inspector had concluded that a building re-erected in these circumstances was a new building not covered by the terms of the previous consent. The High Court upheld this approach.

Whilst, in cases of partial collapse / demolition there may be room for debate as to whether the amount of demolition/reconstruction could be held to be within the ambit of the original permission and its accompanying plans, in most cases, local authorities and The Planning Inspectorate are inescapably led to the conclusion that what has or is to be erected is tantamount to a new dwelling in the countryside and permission should be refused on policy grounds.

Planning Officers have examined the approved plans and are of the opinion that the approved conversion could have been implemented whilst retaining the entirety of

both gable walls, and two thirds of the rear wall, although it is acknowledged that the front wall would have needed to be rebuilt and the need for an entirely new roof structure can be debated. Therefore, the applicant's claim that it was possible to retain only 13.3% of the original building envelope is called into question and Planning Officers are of the view that the actual percentage which could have been retained is significantly higher. Notwithstanding this point, however, it is clear that the 2 brick panels which remain on site are significantly less than 13.3% of the original building. Furthermore, these 2 panels were themselves rebuilt immediately prior to the rest of the building being demolished and therefore none of the original building now remains on site.

Therefore, in this case, planning officers are firmly of the opinion that, the proposal is tantamount to a new dwelling in the countryside, which is contrary to policy and little weight should therefore be afforded to the applicants arguments in respect of the previous approval, as set out above, as a material consideration.

With regard to planning policy the applicants, argue that the proposal is not an opportunistic isolated dwelling in the open countryside, and that policy RES.5 in the Local Plan which restricts development in the Open Countryside needs to be considered and balanced against other material policy considerations. They state:

"It is clearly a consideration of significant weight that that application site is previously developed land; it is not a greenfield site (to this extent it may be very clearly contrasted with the adjacent site on which planning permission was recently refused – ref: 11/4228N). National policy in PPS1 and PPS3 repeatedly emphasises the importance of making efficient use of previously developed land and the application site is one such opportunity. Furthermore, as a result of the work that has thus far been undertaken on the site, it is undeniable that the site is now in a seriously degraded condition and, unless permission is granted for its redevelopment, it is difficult to see how the visual problem that the site now represents can be addressed."

It is acknowledged that because the building concerned was a former commercial building, and not an agricultural building, or domestic outbuilding, both its footprint and curtilage do constitute a previously developed brownfield site as defined in PPS3. It is also acknowledged that Government planning policy prioritises the use of brownfield sites for development over and above Greenfield sites. The site is currently unsightly due to the partially completed building work which has taken place. However residential redevelopment is not the only why in which it could be restored. The site could conceivably be landscaped and incorporated into an adjoining dwelling as additional garden or paddock land. Nevertheless, the fact that this is a brownfield site is considered to be a very important material consideration to which considerable weight should be attached.

The applicants also draw attention to the Ministerial Statement on Planning for Growth (and now repeated in the Draft NPPF) makes clear the principle that: *The Government's top priority in reforming the planning system is to promote sustainable economic growth and jobs. Government's clear expectation is that the answer to development and growth should wherever possible be 'yes', except where this would compromise the key sustainable development principles set out in national planning policy.*

It goes on to say that *“when deciding whether to grant planning permission, local planning authorities should support enterprise and facilitate housing, economic and other forms of sustainable development. Where relevant - and consistent with their statutory obligations - they should therefore, inter alia,*

- *consider fully the importance of national planning policies aimed at fostering economic growth and employment, given the need to ensure a return to robust growth after the recent recession;*
- *take into account the need to maintain a flexible and responsive supply of land for key sectors, including housing;*
- *consider the range of likely economic, environmental and social benefits of proposals; including long term or indirect benefits such as increased consumer choice, more viable communities and more robust local economies (which may, where relevant, include matters such as job creation and business productivity);*
- *ensure that they do not impose unnecessary burdens on development”*

Officers acknowledge that the proposal will help to maintain a flexible and responsive supply of land for housing, which is specifically identified above as a “key sector”. The proposal will also create jobs and economic growth in the construction industry and all the associated supply networks. The Secretary of State for Communities and Local Government has made it clear that he will take the principles in this statement into account when determining applications that come before him for decision. In particular he will attach significant weight to the need to secure economic growth and employment.

With regard to the issue of whether the development *“would compromise the key sustainable development principles set out in national planning policy”*. The applicant points out that *“this issue has already been addressed in the 2008 appeal decision relating to this site where the Inspector observed that the site was reasonably well related physically to the village as part of a continuous ribbon of development, that Haslington had a reasonable range of shops and services and that the bus route provides a frequent service. When these considerations are taken alongside the reuse of a previously developed site, it is clear that the proposal is for sustainable development and, therefore, the Government approach is to say ‘yes’ to this proposal.”* It is agreed that this is another important material consideration.

The applicants also point out that Cheshire East has less than a five year supply of housing land and in accordance with paragraph 71 of PPS3 “suitable” residential applications, therefore, should be considered favourably. The applicant argues that this principle should apply as much to proposals for single dwellings, such as this, as it does to larger proposals of a more strategic nature. The previously approved conversion scheme will have been taken into account when the current housing land supply figures were calculated and the loss of the previous permission will have exacerbated, albeit by a very small amount in percentage terms, the current undersupply of housing. If permission were granted for this application, that reduction in housing land supply could be avoided. The question, therefore, is whether this application is suitable in all other respects, which in this case would include Amenity, Highways, Protected Species, Design and Trees and Landscape.

The design of the proposed dwelling is identical to the conversion which was approved in December 2010 (10/4295N). In comparison with the original building on

the site, the footprint of the property is virtually identical to that, which was originally on the site, and the ridge height is and the external appearance is also identical. The proposal would therefore have no greater detrimental impact on the character and appearance of the open countryside than the building, which previously stood on the site. The test of any proposal must relate to whether it would result in material harm to an interest of acknowledged importance, which is protected by Local Plan policies. Furthermore, there can be no harm associated with the visual impact of the proposed dwelling because it merely replicates that which the Council have relatively recently considered and found to be acceptable on this site.

Indeed, given that the result would be a dwelling on the site which is identical to that which would, otherwise, have resulted from the implementation of the previous permission. It therefore follows that there is no harm arising from the proposal and, consequently, no harm to the environment that would justify the refusal of planning permission. This is an important material consideration in favour of the scheme.

The applicant has also argued that there are a number of aspects of the current proposal which provide real opportunities for an improved development as compared to that which would have been possible through the route of conversion. By its nature, a conversion inevitably embodies a number of constraints to incorporating all of the 'green technology' features that the Applicants ideally wishes to include. By contrast, and as a positive consequence of complete rebuilding a complete package of green technology can be incorporated into a new dwelling resulting in a far more energy efficient property. In particular, the proposals would incorporate the following:

- Ground source/air source heat pump.
- Heat recovery ventilation
- Photovoltaic panels
- Solar thermal
- Upgraded insulation
- Underfloor heating
- Rainwater harvesting.

The proposal, therefore, will produce a 'state of the art' energy efficient property, both in terms of efficient operation and the use/generation of energy from renewable sources and the applicants consider that this is another factor in favour of the grant of planning permission.

The applicant has also referred to a number of similar appeal cases. The first concerns a building at Hambrook in Bristol which was destroyed by fire such that only approximately 10% could have been retained. The Appellant demolished the whole structure. The Inspector took into account that, if the residential use of the site had been extinguished, it had not been done so intentionally and the appellants intention had at all times been to establish a family home. The manner in which the bungalow had been destroyed and demolished were material considerations. The inspector identified that the proposal conflicted with the development plan policy unless there were "very special circumstances" (para 21). The Inspector acknowledged that the Appellant was not aware of the possible planning consequences of demolishing all of the building. He observed that the consequences of the site having a nil use would be "catastrophic" and would cause "substantial hardship". Reference was made to the principle that fairness is a yardstick against which development proposals can be

measured and that in this case the circumstances amounted to exceptional circumstances outweighing the harm to policy and the Green Belt.

This case differs from that at The Printworks, because the property in question was severely damaged by fire and the residential use of the site had not been extinguish intentionally. At The Paintworks, the building was sound and was deliberately demolished and rebuilt in phases under the misapprehension that this still constituted conversion. However, it should be noted that the Inspector attached weight to the intention to establish a family home, and the hardship which would be caused as a result of the loss. In this respect it is comparable to the current application.

The second case referred to by the applicant concerns a site at Pennington, Leigh, where planning permission was given to convert a barn to 2 dwellings. Subsequent reports concluded that there were serious structural problems with the building. However, this was not the case at The Printworks, which was considered to be structurally sound in an engineer's report submitted with the original conversion application. The Inspector concluded that the implementation of the original permission always would have amounted to major reconstruction and this factor was a "very important circumstance" in determining the appeal. The Inspector concluded that "fairness should be seen to underpin the decision making process" and that in the circumstances it was neither fair nor reasonable to prevent the development from being completed (para.15). Consequently the very special circumstances outweighed Green Belt policy. As stated above, at the current applicant has contended that the original permission for the conversion of The Printworks gave consent for major reconstruction but this point is contested by Planning Officers. Consequently it is considered that the case at Pennington is not comparable in this respect and little weight should be afforded to the Inspectors comments in this instance.

Proposals to replace a dwelling reduced to a shell by a fire in circumstances where there were no development plan polices allowing for replacement at Crosthwaite in Kendal were also considered at Appeal. In this case the Inspector observed that when the requirement for replacement arises from an accident, such as a fire, then there are strong personal reasons for allowing rebuilding, even though in this case 11 years had elapsed since the fire. This, together with the high standard of design of the proposal justified the granting of planning permission. It is not considered that this case is comparable given that the requirement for replacement arose from an accident, whereas at The Printworks, the demolition was intentional.

The final case quoted by the applicant relates to a site at Upton on Severn where approval was granted for restoration, improvement and extension of a former cottage. In the course of the works the cottage was "negligently demolished by the building contractor". The Inspector concluded that circumstances had changed only because of an "unfortunate mishap" (para 11). The building had been purchased in order to provide a home, but the proposal would not cause any harm to interests of acknowledged importance and no visual harm to the countryside. Consequently, although it was a departure from the development plan, the special circumstances justified the grant of permission.

This case is more directly comparable to the current application in that it was the negligence of the contractor managing the project that was the cause of the demolition. It is of particular note that the Inspector attached considerable weight to

the absence of harm from the re-building application, as that is the principal material consideration in favour of the proposal at The Printworks, as set out above.

The applicant concludes that:

It is clear that in each case referred to, and notwithstanding strong policy reasons dictating against the principle of new development (which are not as pressing in this case), that the Inspectors have recognised that it would not be reasonable, or fair, if the planning system operated in a manner which deprived the owners in each of the cases of the permissions that they had, unfortunately, lost through no fault of their own. It is clear, therefore, that there is always the potential for special circumstances to outweigh planning policy principles that may suggest an alternative approach. We consider that this is an extraordinarily unfortunate situation, the circumstances are very exceptional and there is no reason why the planning permission should not be granted in order to, in effect, reinstate that which it was always intended should be on the site.

It is acknowledged that the Inspectors in the cited cases have set aside policy and have attached greater weight to the individual material considerations in each case. It is also noted that the concept of “fairness” has featured heavily in their reasoning, but, as the applicant points out, these cases relate to where permissions had been lost through no fault of the applicant. In the case of The Printworks, the building was not lost as a result of an accidental and unavoidable event such as fire or structural collapse, as was the case in the first three examples above, it was demolished due to the negligence of the project manager. However, it could be argued that the applicants had placed their trust in the project manager, and that consequently, despite the deliberate demolition they could not be held responsible for the fact that the permission had been lost. In this respect the proposal is comparable to the fourth example, which was also allowed by the Inspector. It is also noted that in all of the above cases the Inspectors gave weight to the personal circumstances of the applicants in terms of financial hardship and the loss of family homes which would be incurred as a result of any refusal of planning permission. The most significant point arising from the Appeal decisions, however, is that relating to the absence of harm arising from reinstating a building, identical in appearance to one which was always intended to be on the site. This is an important material consideration, which applies to the proposal currently under consideration.

Planning Officers have also identified a number of other cases where similar issues have been considered by Inspectors. The first, dated 26 July 2004, 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 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.

In a further Appeal Decision from the Macclesfield area, which was also located in the Green Belt 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 for 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 in the former Borough of 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 The Printworks 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. The new dwelling would also be identical in external appearance to the previously approved conversion. However, it differs to the above case in that a comprehensive structural report was submitted with the initial application.

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. This would also be case at The Printworks. Another key aspect in which previous decisions assist the applicant is that the Inspector took the applicant's personal circumstances into account. 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.

A further exceptional and material consideration in this case is the actions of the previous project manager. If it is accepted that this was the cause and that all reasonable steps had been taken by the applicant to appoint a competent and suitably qualified person to that role, it could be viewed as unreasonable to withhold the permission when the collapse was due to exceptional circumstances outside the applicant's control. The appeal decisions quoted by the applicant illustrate that the principle of fairness is embodied within the planning process. The decision process should not take away rights to development unnecessarily, especially where the circumstances have arisen through no fault of the owner.

In accordance with advice contained within PPS1, the personal circumstances and financial hardship of the owner are also material considerations which must be taken into account. Other important material considerations in this case include the fact that the application site is a brownfield site, sustainably located to the facilities and services of Haslington. Government policy, especially in the light of the land supply situation, indicates that a positive approach should be adopted to proposals in these circumstances. The proposal is identical to that which was recently approved on the site and the new build approach enables a far more comprehensive approach to green technology to be employed which will result in a state of the art energy efficient property.

Amenity

The nearest neighbouring property is over 75m from the building in question and therefore the proposed dwelling would not be harmful to neighbouring amenities with regard to noise, disturbance, overlooking or overshadowing. Sufficient private amenity has been provided for the proposed dwelling.

Highways

In view of the existing approval and in the absence of any objection from the Strategic Highways' Manager, it is not considered that a refusal on highways grounds could be sustained.

Protected Species

Given that the existing building on site has been demolished and all the necessary vegetation removal has taken place, it is not considered that any protected species issues are raised in respect of this proposal. Furthermore, no ecological concerns were identified at the time of the previous approval.

Design

As stated above, the proposed dwelling is identical in appearance to the previously approved conversion scheme, the design of which was considered to be acceptable. The building is set back from the road and is well screened from public view by existing trees within the site. It will also be viewed within the context of the suburban and ribbon development, which characterises this part of Haslington.

Trees and Landscape

The site is surrounded by a number of mature trees. The Councils Landscape Officer has examined the application and commented that the siting of the proposed dwelling is the same as that previously approved under 10/4295N. The only apparent difference to the site layout is the addition of a proposed parking area to the north of the building. In addition, a number of trees which were present at the time of determination of the previous application have been removed from the site. The trees in question were not widely visible to public view.

Taking into account the earlier approval, subject to tree protection and landscape conditions, the proposal is considered to comply with the relevant local plan policies.

Other Matters

A number of freestanding solar panels and a substantial amount of engineering works, in terms of raising of land levels have taken place within the site boundary. These works require planning permission and are not included as part of the application currently under consideration. The applicant has advised that further applications will be submitted for these works once a determination on the principle of the new dwelling has been made.

10. CONCLUSION

It is concluded that the proposed development does not represent the conversion of an existing building or meet the criteria for infill development in the Open Countryside. It is, therefore, contrary to Policy and represents a departure from the development plan. Nevertheless, Section 70 of the Town and Country Planning Act 1990 requires Local Authorities to have regard to “any other material considerations”, which allows them to exercise their own planning judgment as to whether the facts of any particular application (for example the personal circumstance of the applicant, the actions of the project manager and any harm arising from the finished appearance of the building) amount to a sufficiently strong reason to permit a deviation from Local Plan Policy.

In strict policy terms the current proposal is contrary to relevant policies and to permit it would be a departure from those policies. However, after considering the individual circumstances of this case, weighing in the balance the appeal decisions quoted, Members must consider whether the determination of this application should be in line with the normal restrictive policies which control new residential development within the open countryside, or whether the material considerations put forward by the applicant are sufficiently strong to override these policies.

In terms of material considerations, the applicant has argued that under the previous approval only 13.3% of the original building would have been retained, and that in effect permission had been granted for a new dwelling. Consequently the amount of demolition and rebuilding proposed could be carried out within the ambit of the original permission and the conversion could still be implemented. Planning Officers are of the view that the actual percentage which could have been retained is significantly higher. Notwithstanding this point, however, it is clear that the 2 brick panels which remain on site are significantly less than 13.3% of the original building. Furthermore, these 2 panels were themselves rebuilt immediately prior to the rest of the building being demolished and therefore none of the original building now remains on site. Therefore, in this case, planning officers are firmly of the opinion that, the proposal is tantamount to a new dwelling in the countryside, which is contrary to policy and little weight should therefore be afforded to the applicants arguments in respect of the previous approval, as set out above, as a material consideration.

However, there are a number of material considerations which weigh in favour of the proposal. Most importantly, the majority of Appeal Decisions which have considered similar cases support the view that as the completed development would be identical in terms of appearance to the previously approved conversion, no “harm” would result from the development.

Furthermore, in this case, there are other material considerations, in terms of the actions of the project manager, which were largely outside the applicant’s control and could not have been predicted, which have led to the demolition of the building through no fault of the applicant. It is also noted that the concept of “fairness” has featured heavily in Appeal Inspectors reasoning, where it has been held that the applicant lost their original consent through no fault of their own.

In accordance with advice contained within PPS1, the personal circumstances and financial hardship of the owner are also material considerations which must be taken into account and have been afforded considerable weight by previous Inspectors at appeal.

Other important material considerations in this case include the fact that the application site is a brownfield site, sustainably located to the facilities and services of Haslington. The new build approach enables a far more comprehensive approach to sustainability and green technology to be employed which will result in a state of the art energy efficient property. Recent Government guidance in the form of the Ministerial Statement on Planning for Growth (and now repeated in the Draft NPPF) states that there should be a presumption in favour of sustainable development, particularly where proposals would create economic growth and employment, and help to maintain a flexible and responsive supply of land for housing. It goes on to state that Local Planning Authorities should ensure that they do not impose unnecessary burdens on development.

Furthermore, Cheshire East has less than a five year supply of housing land and in accordance with paragraph 71 of PPS3 "suitable" residential applications, therefore, should be considered favourably. The previously approved conversion scheme will have been taken into account when the current housing land supply figures were calculated and the loss of the previous permission will have exacerbated, albeit by a very small amount in percentage terms, the current undersupply of housing. If permission were granted for this application, that reduction in housing land supply could be avoided.

The application is acceptable in terms of Amenity, Highways, Protected Species, Design and Trees and Landscape and therefore, with the exception of the conflict with policy in principle, it is considered to be suitable in all other respects.

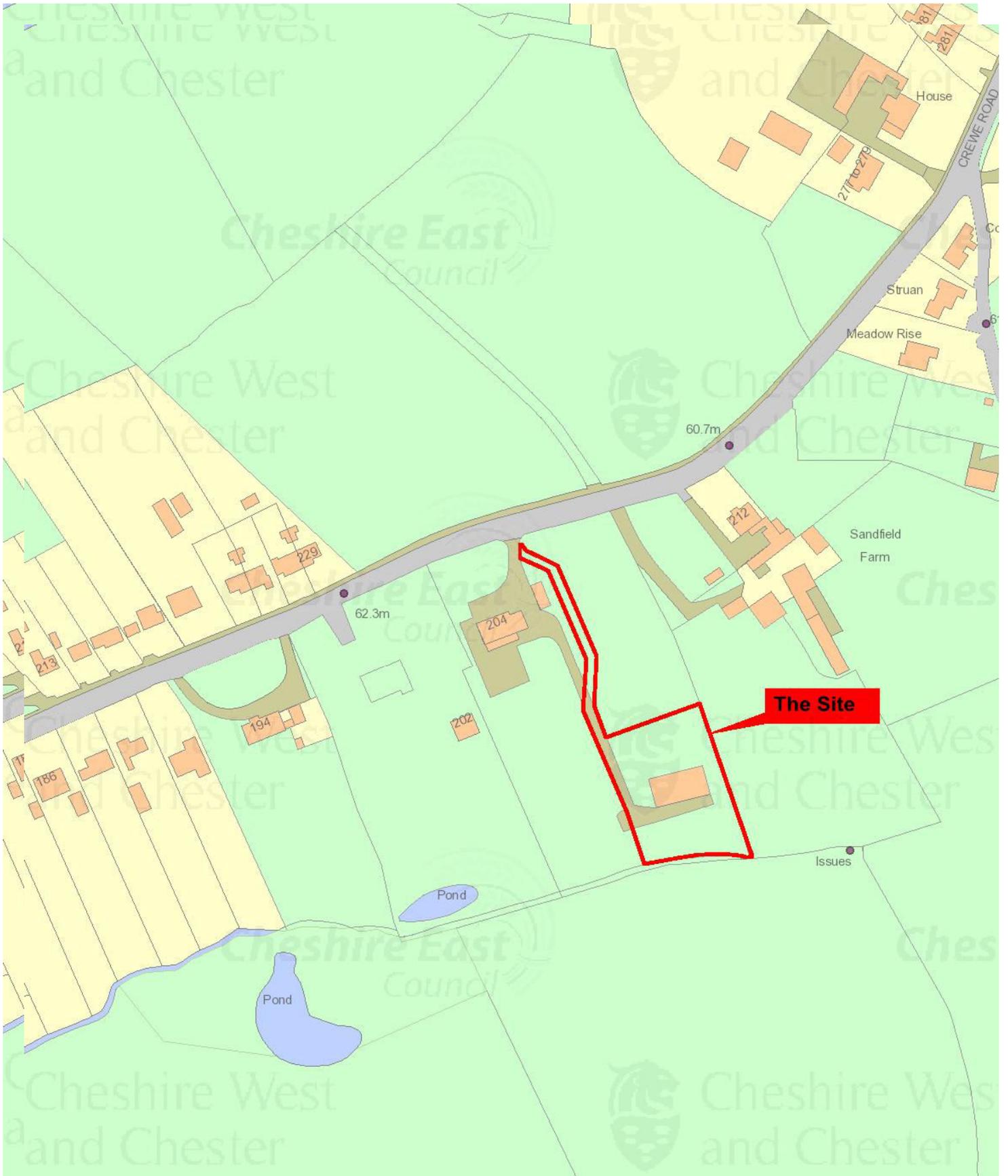
In the light of the above it is considered that, on balance, in this case, the material considerations are sufficient to outweigh the provisions of the development plan policy and therefore planning permission should be granted.

11. RECOMMENDATIONS

APPROVE subject to conditions:-

Conditions

- 1 Standard**
 - 2 Reference to plans.**
 - 3 Materials including surfacing**
 - 4 Boundary treatment**
 - 5 Landscaping**
 - 6 Landscape implementation**
 - 7 Removal of permitted development rights for extensions, alterations, outbuildings and gates / walls / fences / satellite dishes etc.**
 - 8 Contaminated land**
 - 9 Construction Hours**
 - 10 Pile Driving**
 - 11 Tree Protection**
 - 12 Implementation of Tree Protection**
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