

Application No: 13/1408N

Location: LAND AT, CHAPEL LANE, BADDILEY, CW5 8PT

Proposal: Removal of condition 9 (restricted use) to planning application 12/3106N -  
Erection of 3 bed dormer bungalow for wheelchair user and family

Applicant: Mr D Cundall

Expiry Date: 04-Jun-2013

**SUMMARY RECOMMENDATION: Refuse**

**MAIN ISSUES:**

- Principle of Development;
- Site History; and
- Removal of Condition 9.

**REFERRAL**

The application has been referred to Strategic Planning Board as the proposal represents a departure from the Development Plan and the previous applications 11/2017N and 12/3106N were also determined by Board Members.

**DESCRIPTION OF SITE AND CONTEXT**

The application relates to a paddock area to the front of an existing property known as Fields Farm, which lies to the north of the site. The application site would be accessed off an existing track which serves the farmhouse. The site is situated wholly within the Open Countryside, as defined by the Borough of Crewe and Nantwich Replacement Local Plan 2011.

**DETAILS OF PROPOSAL**

This application seeks permission to remove condition 9 (restricted use) to planning application 12/3106N for the erection of 3 bed dormer bungalow for wheelchair user and family at Land at Chapel Lane, Baddiley.

**RELEVANT HISTORY**

11/2017N – Outline Planning- 3 Bedroom dormer bungalow(for wheelchair user and his family) – Approved – 5<sup>th</sup> December 2011

12/3106N - Erection of 3-Bed Dormer Bungalow for Wheelchair User and Family – Approved  
– 4<sup>th</sup> October 2012

## **POLICIES**

### **Borough of Crewe and Nantwich Replacement Local Plan 2011**

BE1 (Amenity)  
BE2 (Design)  
BE3 (Access and Parking)  
BE6 (Development on Potentially Contaminated Land)  
NE2 (Open Countryside)  
NE5 (Nature Conservation and Habitats)  
NE9 (Protected Species)  
RES5 (Housing in the Open Countryside)

### **Other Material Considerations**

National Planning Policy Framework

## **CONSIDERATIONS (External to Planning)**

**Environmental Health:** No objections subject to the following informative being attached to the Decision Notice.

The applicant is advised that they have a duty to adhere to the regulations of Part IIA of the Environmental Protection Act 1990, the Town and Country Planning Act 1990 and the current Building Control Regulations with regards to contaminated land. If any unforeseen contamination is encountered during the development, the Local Planning Authority (LPA) should be informed immediately. Any investigation / remedial / protective works carried out in relation to this application shall be carried out to agreed timescales and approved by the LPA in writing. The responsibility to ensure the safe development of land affected by contamination rests primarily with the developer.

## **VIEWS OF THE PARISH / TOWN COUNCIL**

No objections

## **OTHER REPRESENTATIONS**

No representations received

## **APPLICANT'S SUPPORTING INFORMATION**

Letter from the Halifax dated 13<sup>th</sup> December 2012

## **OFFICER APPRAISAL**

### **Principle of Development**

The application site is located wholly within the Open Countryside. According to Local Plan policy NE2 (Open Countryside) states that within the Open Countryside only development which is essential for the purposes of agriculture, forestry, outdoor recreation, works by statutory undertakers, or other uses appropriate to a rural area will be permitted. This policy does however, allow as an exception, the infilling of a small gap with one or two dwellings in an otherwise built up frontage. RES5 (Housing in the Open Countryside) is consistent with the 'exception' of NE2 (Open Countryside).

### **Site History**

Members may recall that the principle of residential development has already been accepted under planning permission 11/2017N. Outline consent was granted with a personal permission for a detached 3 bedroom dormer bungalow for a wheelchair user, Mr Dan Cundall. The appellant's personal circumstances were considered to be of a sufficient material consideration to outweigh the general presumption against new residential development in the Open Countryside, as set out in the Development Plan.

The previous permission (11/2017N) was approved with a personal condition specifically to Mr Dan Cundall.

Condition 15 stated:

*The permission shall only be implemented by Mr. Dan Cundall. When the premises cease to be occupied by Mr. Dan Cundall, the use allowed must be stopped and all materials and equipment brought on to the premises in connection with the development must be removed unless a further planning permission has first been granted on application to the Local Planning Authority.*

*Reason: Due to the special circumstances of the case and in accordance with the advice contained within "The Planning System: General Principles", which accompanies Planning Policy Statement 1 (April 2005) the use is granted in favour of the applicant.*

It was considered that this condition was overly restrictive in that once the building ceases to be occupied by Mr Dan Cundall the use must stop and all materials and equipment brought on to the premises must be removed, unless a further planning permission has first been granted. On the basis of this condition, Mr Dan Cundall was unable to obtain a mortgage to finance the building costs. As such he cannot proceed with the development. Furthermore, the condition creates uncertainty if a further permission was to be refused in the future if the family situation changed (i.e. if Mr Dan Cundall was to pass away before his wife). Unintentionally it would appear that condition 15 was overly restrictive.

Consequently, the condition was varied so that it took into account Mr. Dan Cundall, his spouse, family, dependants or carers. Following the grant of this planning permission, the applicant is now seeking to remove this condition. In particular, condition 9 attached to planning permission 12/3106N.

## Removal of Condition 9

*The use allowed by this permission must only be carried out by Mr. Dan Cundall or his spouse, carers and any resident dependants.*

*Reason: Due to the special circumstances of the case the planning permission would have been refused for unrestricted use within Class C3 of the Use Classes Order. This is in accordance with the requirements of policy NE2 (Open Countryside) of the Borough of Crewe and Nantwich Replacement Local Plan 2011*

The applicant states that the reason they need to remove this condition is due to being unable to obtain a mortgage. The applicant has submitted a letter from a mortgage provider, which states *'They are unable to consider a mortgage application on a property which is subject to a planning restriction limiting its occupation to a class of occupier'*. The applicant also confirms that they have tried several other lenders, but have received the same response.

The original application was approved as it was determined the personal circumstances of the applicant was sufficient to outweigh local plan policies restricting new development in the open countryside. The applicant had demonstrated that there was no alternative accommodation available within the vicinity that could his requirements and that the only way in which his needs can be adequately catered for this through the construction of a new-build property adjacent to his parent's house in Chapel Lane, Ravensmoor. Furthermore, the applicant demonstrated that the building contained 'essential' requirements rather than 'desirable' requirements.

It is considered that the removal of this condition will remove the special justifications for allowing the dwellinghouse in the first place. If the condition was removed, the proposal would be an open market property within the open countryside, where there is a strong presumption against any form of inappropriate development. The application site does not constitute a small gap in an otherwise built up frontage and as such the proposal does not meet the exception of policy NE.2 (Open Countryside). Therefore, the principle of development for a dwelling within the Open Countryside is therefore unacceptable and as such the removal of the condition is not justified.

## CONCLUSIONS AND REASON(S) FOR THE DECISION

The site lies in an area of open countryside where there is strict control over new development. The application site does not constitute a small gap in an otherwise built up frontage as such the proposed dwelling represents an unjustified and unwarranted intrusion into the open countryside. Furthermore the site is located within an isolated location away from any settlement with the associated services to support a dwelling and as such the application site is considered to be an unsustainable location.

While there is sympathy with the applicant's difficulties in obtaining a mortgage, the removal of Condition 9 will remove the special justifications for approving the dwellinghouse as a departure to normal policy. As such the proposal is therefore contrary to Policies NE.2 (Open Countryside) and RES.5 (Housing in the Open Countryside) of the Crewe and Nantwich

Replacement Local Plan 2011 and advice advocated within the National Planning Policy Framework

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