

Planning Reference No:	P08/0504
Application Address:	Little Heath Barn Cheshire Street Audlem
Proposal:	Conversion of Remaining Structures of Barn and Reconstruction of Collapsed Barn to form Four Dwellings
Applicant:	Markden Homes
Application Type:	Full Planning Permission
Grid Reference:	366093 344343
Ward:	Audlem
Consultation Expiry Date:	21st May 2008
Date for Determination:	6th June 2008

MAIN ISSUES

The acceptability of the development in principle

SUMMARY RECOMMENDATION

APPROVE with conditions

REFERRAL

At the meeting on the 29th May 2008 the Development Control Committee determined that the application should be referred to Full Council, with the recommendation that it be approved as a departure from the Development Plan.

1. SITE DESCRIPTION AND DETAILS OF PROPOSAL

The site comprises a former farmstead located on Cheshire Street in Audlem. The site is within Open Countryside, as defined in the local plan, albeit only a short distance outside the Audlem Settlement Boundary.

Planning permission was granted in March 2004 for the conversion of an existing barn on site into four dwellings. (P03/1237 refers). Following commencement of development, however, the majority of the barn collapsed and was demolished and all that remains on site are the two gable ends of the building. It is the applicant's intention to rebuild the missing section of the barn and to convert what remains of the gable end to form four dwellings, identical in external appearance to the previously approved conversions. 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 conversion of the remaining structures of the barn and reconstruction of the collapsed section to form four dwellings to replace the two storey barn.

2. PREVIOUS RELEVANT DECISIONS

P03/1237 Barn Conversion into 4 dwellings – Approved 31st March 2004

3. PLANNING POLICIES

Local Plan Policy

NE.2 (Open Countryside)
RES.5 (Residential Development in the Open Countryside)
NE.16 (Residential Re-use of Rural Buildings)

National Policy

PPS1 – Delivering Sustainable Development
PPS3 – Housing
PPS7 – Sustainable Development in Rural Areas

4. OBSERVATIONS OF CONSULTEES

County Council:

No objection

Highway Authority:

No objection provided that the access is constructed to CCC specification.

5. VIEWS OF THE PARISH / TOWN COUNCIL

Audlem Parish Council has no objection

6. OTHER REPRESENTATIONS

No letters had been received at the time of report preparation.

7. APPLICANT'S SUPPORTING INFORMATION

Planning, Design and Access Statement

- The proposal uses exactly the same proposed elevations and floor plans as the conversion.
- In the intervening period there have to been any material changes to policy or this part of Audlem.
- It is considered that the proposal complies with Policy NE16 concerning the reuse and adaptation of a rural building for residential use.

- It also satisfied the relevant criteria of NE2 concerning development in the open countryside, when, as an exception, infilling may be acceptable.
- As such it is considered that it complies with the development plan and permission should be granted.
- Should it be considered that, because of the partial collapse, the proposed rebuilt sections are contrary to policy, there are very exceptional circumstances to the submission of this application which justify a grant of planning permission.
- The applicant has discharged the conditions to commence development attached to the 2004 permission.
- Works were being undertaken to the barn in accordance with the requirements of the building regulations and specifications of an independent structural engineer who had inspected the barn, until the exceptional earthquake followed by severe gales caused its partial collapse
- This has been confirmed by the structural engineer in his subsequent report
- It is emphasised that at no time was there any intention by the applicant to demolish the barn or cause its partial collapse.
- Reference is made to an appeal decision at Jarmans Cottage which shows that even where major rebuilding takes place following, in that case hasty demolition, rather than collapse resulting from natural causes, the Inspector considered the impact of the development was an improvement and outweighed the harm to the Green Belt.
- The barn would look exactly the same as that proposed previously which was found to be acceptable by the Council.
- Therefore there would be no harm to planning interests if permission was granted.
- It is a material consideration that the remaining parts of the building are still standing and in their current condition are open to the weather and vandalism. It would be far preferable in terms of safety, security and amenity for the proposed conversion and rebuilding works to take place as speedily as possible.
- It is therefore concluded that planning permission should be granted.

8. OFFICER APPRAISAL

Policy Position

The main issue in the consideration of this case is the acceptability, in principle, of the proposed development. The applicant argues that because the proposal involves the conversion of the remaining gable end sections, as well as rebuilding, it should be considered under 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 4 new dwellings within the Open Countryside. Consequently, it is not considered that NE.16 should be applied and the proposal must be determined as one for new dwellings 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.

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.

The applicant considers that the development constitutes infill development and complies with Policy NE.2. However, given that the proposal is four dwellings and that the site is bounded by open countryside to the north, it is not considered to be compliant with this exception. As the proposed dwellings are 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

It is the applicant's case that works were being undertaken to the barn in accordance with the requirements of the building regulations and specifications of an independent structural engineer who had inspected the barn. However, the applicant claims that the building was weakened by an exceptional earthquake, which was followed by severe gales caused its partial collapse. This has been confirmed by the applicant's structural engineer in his subsequent report. The applicant also claims that at no time was it his intention to demolish the barn or cause its partial collapse.

Furthermore, following reconstruction, the barn would look exactly the same as the conversion proposed previously and therefore there would be no harm arising from the development to planning interests if permission was granted.

It is also, in the applicants view, a material consideration that the remaining parts of the building are still standing and in their current condition are open to the weather and vandalism. It would be far preferable in terms of safety security and amenity for the proposed conversion and rebuilding works to take place as speedily as possible.

With regard to the latter point, it should be noted that if permission were not granted for the development and vandalism and dereliction resulted in an untidy site, the Local Planning Authority has at its disposal enforcement powers to deal with this eventuality. Consequently, it is not a reason for granting planning permission and should be afforded little weight as a material consideration.

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 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.
- ii) 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.
- iii) The principle of development on this site carried the support of the Parish Council and the local community.
- iv) 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.

The applicant has quoted a further 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 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 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 Little Heath 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. The four new dwellings would also be identical in external appearance to the previously approved conversion. Another similarity to the above case is that a comprehensive structural report was not submitted with the initial application,

although the applicant did engage a structural engineer prior to commencing work. However, the appeal cases related to a single dwelling, whereas the proposal currently under consideration is a scheme for four dwellings

Consideration must also be given to the Human Rights Act. There are two Human Rights in prospect. They apply to companies as much as to individuals.

(1) **Interference with the right to respect for family life and home (except in defined circumstances).** Article 8 states that everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a Public Authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder and crime, for the protection of health or morals or the protection of the rights and freedoms of others.

(2) **Interference with the right not to be deprived of property (except in defined circumstances).** Within the First Protocol Article 1 states: Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

With regard to the former of the two provisions, in this instance Little Heath Farm is a speculative development by a commercial property company and is not by a private individual for their own occupation. Therefore, a decision to refuse this application would not result in the loss of any existing residential accommodation and would not represent an infringement of human rights under Article 8.

The level of interference with the latter is very limited. First Protocol Article 1 does not, in any way, prohibit the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. Whilst it may be argued that there would be a slight interference with Property Rights this would be by development control rather than by direct deprivation/demolition and the Council's decision upon the planning application would not result directly in the destruction of an existing asset. In *Young v SSE and Hinckley & Bosworth BC*, the High Court decided that the doctrine of abandonment did not breach the Human Rights Act. Parts of that judgment are relevant by analogy. The Court considered that an Appeal Inspector's refusal did not deprive the claimants of their possessions, merely of a prospect that planning permission might be granted.

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 Little Heath Barns. 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 earthquake and gales which the applicant claims caused the collapse of the barn. If it is accepted that this was the cause and that all reasonable steps had been taken to support the barn during the works to account for ordinary weather conditions, which the structural engineers report implies, it could be viewed as unreasonable to withhold the permission when the collapse was due to exceptional circumstances outside the applicant's control.

This recommendation would not set an undesirable precedent for approval of proposal for conversion of structurally unsound buildings which the council will continue to resist on policy grounds.

9. CONCLUSIONS

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 earthquake, gales 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.

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 in the open countryside, or whether the special circumstances put forward by the applicant should override these policies.

10. RECOMMENDATION

That the application be approved as a departure from the Development Plan subject to the following conditions.

1. Standard
2. Plans
3. Materials to include reclaimed bricks and tiles and sample panel to be constructed on site for approval.
4. Drainage details
5. Vehicular access details
6. Removal of agricultural buildings
7. Boundary treatments
8. Surfacing materials
9. Residential curtilage to be defined

10. Removal of permitted development rights
11. Landscaping scheme
12. Implementation of landscaping
13. Metal Rainwater goods
14. Timber windows and doors
15. Timber garage doors
16. Conservation Roof lights
17. Tree Protection
18. Implementation of tree protection
19. Access to CCC Specification