

# REPORT TO THE NORTHERN AREA PLANNING COMMITTEE

Date of Meeting	11 <sup>th</sup> August 2010		
Application Number	10/02174/FUL		
Site Address	Coombe Green Farm, Lea, Malmesbury, Wiltshire, SN16 9PF		
Proposal	Conversion, Extension, Alteration & Rebuild of Existing Barn to Form Single Dwelling		
Applicant	Mr Higginbottom		
Town/Parish Council	Lea & Cleverton		
Electoral Division	Brinkworth	Unitary Member	Toby Sturgis
Grid Ref	395388 186210		
Type of application	Full Application		
Case Officer	Tracy Smith	01249 706 642	Tracy.smith @wiltshire.gov.uk

## Reason for the application being considered by Committee

This application has been submitted to the Committee for decision at the request of Councillor Toby Sturgis to consider the differences between the approved scheme and that proposed and to assess the proposal against Local Plan policy.

### 1. Purpose of Report

To consider the above application and to recommend that planning permission be REFUSED

One letter of support has been received and the Parish Council have recommended that the application be permitted.

### 2. Main Issues

Planning permission was granted for the conversion of the barn, however during implementation of the permission the gable wall of the original building collapsed. The main issue in relation to this application is whether there remains enough of the original building to consider the application to be a conversion and whether it complies with the policies of the Local Plan.

The main Policy issue is whether the proposal complies with Policy BD6 – that is can it still be considered a ‘conversion’

### 3. Site Description

The original building was a modest, single storey former agricultural building. The site is outside the framework boundary (and therefore for policy purposes in the countryside), but within Lea Conservation Area.

#### 4. Relevant Planning History

Application Number	Proposal	Decision
09/02252/FUL	Conversion of barn to dwelling	Permit
09/01884/FUL	Conversion of barn to dwelling	Withdrawn
09/01387/FUL	Conversion of barn to dwelling (revision to 08/02417/FUL)	Refuse*
<i>* Refused on grounds that the extension proposed was too large and would not comply with policy BD6 and that a legal agreement securing contributions to public open space had not been secured.</i>		
08/02417/FUL	Conversion of barn to dwelling	Permit

#### 5. Proposal

From the planning history above it is clear that since permission was granted for a conversion of the building there have been further applications seeking amendments. The permission that was being implemented was the most recent permission 09/02252/FUL. During implementation the northern gable of the barn collapsed. As the permission was specifically for the conversion of the barn Officers took the view that it would not be possible to implement the permission – effectively the building now required significant rebuilding beyond that permitted.

The applicant ceased work on the site and has submitted the current application in an attempt to regularise the situation. Effectively the resultant building would be of the same dimensions and design as that approved under 09/02252/FUL – the key issue is whether the additional rebuilding that resulted from the collapse of the wall (regardless of the circumstances of the collapse) would render the whole proposal unacceptable in policy terms.

#### 6. Consultations

**Lea and Cleverton Parish Council** have advised that having read the design and access statement and are of the view that the inadvertent collapse of the entire north gable should not be considered to anything more than an unfortunate occurrence which was promptly reported. The site is within the conservation area but outside the framework boundary. The resulting building is in keeping with surrounding buildings and will only serve to enhance the immediate area. The Parish are of the view that the application should be granted consent.

#### 7. Publicity

The application was advertised by site notice, press advert and neighbour consultation.

1 letter of support received commenting that they strongly support the application to rebuild the old farm building. The existing one is derelict and untidy and it will enhance the area to have it rebuilt.

#### 8. Planning Considerations

On being advised by the applicant that part of the building to be converted had collapsed officers were asked to advise the applicant on how to proceed. This report aims to inform Members of the considerations officers took into account in giving that advice and making recommendations on the current application.

#### Recent permission - 09/02252/FUL

Officers reviewed the 2008 and 2009 permissions, the information submitted to support it and the decision notice that was issued. The applications were specifically termed as a 'conversion' ('Conversion of Barn to Dwelling') and all the correspondence (including the design and access statement) indicate that the proposal is to reuse elements of the existing building. There can be no doubt that all proposals (for this particular building) have been submitted on the basis that it was intended to *convert* the building. Indeed, as Members will be aware, any proposal for a new

build dwelling would have been resisted as the site lies outside the framework boundary (Policy H4 – Residential development in the open countryside).

All applications have been assessed against policies contained within the Local Plan, notably BD6 (Re-use of rural buildings). Indeed the 2009 permission that was being implemented included an informative that clarified: “The applicant should note that this permission is for the conversion of the existing barn in accordance with the permission granted and the approved drawings. Any significant demolition or rebuilding of the existing structures on the site will negate the permission hereby granted.” Whilst this informative was not included on previous decision notices, this is not an additional or onerous imposition, but merely reminds the applicant of the terms upon which permission for a conversion is granted.

A structural survey was requested in relation to the original permission in 2008. A report was submitted by the applicant, which concluded that the building was capable of conversion, subject to strengthening the existing roof.

The details submitted in relation to 09/02252/FUL (the most recent permission that was being implemented) clearly indicated the replacement of the roof and the loss of some of the walling (through the introduction of the extensions and the amendments to the openings) but it is clear that a significant amount of the walling was to stay (drawing 3337/20 demonstrates that). The applicant does not dispute that it was the intention to retain the northern gable, the eastern wall and most of the western wall (the southern wall being lost as a result of the approved extensions). In hindsight officers consider that the permission was perhaps a little generous in the amount of alteration that was permitted to the barn to secure its conversion. However, with a significant part of the walls remaining and the confirmation of the structural survey that the building was capable of conversion this was not an unreasonable decision.

### **The need for a new application**

The applicant contacted the Council early in May to report that the northern gable of the barn had collapsed whilst the proposal was being implemented. The case officer immediately advised that with such a significant loss of the original fabric it was unlikely that the permission (09/02252/ful) could now be lawfully implemented. Understandably, the applicant chose to dispute this advice. However, the view of officers has remained consistent throughout: that is to say, that further demolition, beyond what was specifically granted through 09/02252/FUL, would potentially render the permission incapable of being implemented.

This approach has been confirmed in a number of planning and appeal cases. In a similar case an Inspector concluded that while it may have been apparent to the appellants and officers of the council, that parts of the walls were in risk of collapse, this did not alter the validity or need to comply with the planning permission. Since the requirement to adhere to the approved plans could not be complied with, the permission was not capable of being implemented. In a recent appeal decision within the northern area of Wiltshire (Ashley Lodge Farm, Ashley, reference 08/02091/s73a) the Inspector referred to a court case (Hadfield v Secretary of State and Macclesfield Borough Council):

*“In that case Mr Nigel Macleod QC found that the law does not permit the appellant to carry out building operations which fall outside the scope of the planning permission simply because it is found that the permitted scheme is otherwise practicably incapable of implementation. Faced with a situation where following commencement of the permitted scheme, the scheme is found to be incapable of implementation in accordance with the planning permission which authorises it, solely because of what is found after commencement, the proper course is for the applicant to apply for a variation to the planning permission.”*

On the basis of all the above information officers could draw no other conclusion than that the current permissions (08/02417/FUL or 09 /02252/FUL) cannot be implemented.

Officers advised the applicant of two courses of action: One was to submit a variation to the application (which they have chosen to do). However, the applicant was advised that if he disagreed with Officers another option would be to submit an application for Certificate for Lawful Use or Development (LDC) to attempt to argue that the works that have been carried out and the proposed works to 'implement' 09/02252/ful were lawful.

Officers did advise the applicant that in their view, should works continue, the resultant building could not reasonably be defined as a 'conversion'. However, as described above, the permissions did allow for elements of new-build and Officers advised that there may be a justification *in this particular case* to conclude that a new application would be successful. An assessment has to be made about the difference between the amount of rebuild allowed by the permissions and the amount of rebuild that will be required to complete the building now. The applicant was invited to submit an application supported by arguments and justification for the additional rebuilding.

A recent site visit revealed that the eastern wall remains (propped and leaning slightly) and parts of the western wall remained. All other elements of the building have been removed or have collapsed.

### **The current application**

The current application seeks the 'conversion, extension, alteration and rebuild of an existing barn to form a single dwelling'. This description is somewhat of a compromise as officers and agent could not agree on the original wording of the description (officers considering this to be a 'rebuild'; the applicant and agent still consider this to be a 'conversion'). The critical consideration here is the difference between what was approved and what is now proposed.

The applicants have supplied useful drawing (3337/20) which overlays the original existing building over the approved resultant building. The areas to be retained as part of the conversion are highlighted in blue hatching. This plan is available on the application file, website and will be available at the Committee meeting. It shows that had 09/02252/ful been implemented in accordance with the approved plans:

- on the south elevation none of the original wall would have remained (as a result of an extension being built);
- on the west elevation about half the length of the wall was to remain (although even this remaining element would have additional doorway openings within it) and the eaves height raised by 800 – 900mm
- on the east elevation the entire wall would have remained – except for a small flat roofed extension that was to be removed and replaced with a new extension - and the eaves height raised by 800 – 900mm
- on the north elevation the entire gable was to be retained subject to amended openings and the eaves height raised by 800 – 900mm

In effect the approved conversion would have resulted in the loss of the entire roof structure, loss of the entire south elevation, loss of at least 50% of the west elevation, several additional and amended openings and the raising of the eaves by an average of 850mm.

The collapse of the northern gable resulted in the loss of a significant amount of the original element of the building. In effect were works to continue the only original elements of the building remaining would be the east elevation and part of the west elevation.

Policy BD6 allows for reuse of buildings in the countryside subject to a number of criteria. In considering this application it is the first of those criteria that is key to the Council's consideration. That is whether 'the proposed use will be contained within the building and *does not require extensive alterations, rebuilding and or extension*'. By definition the approved scheme 09/02252/ful was considered *not* to result in "extensive alteration, rebuilding or extension." In hindsight (as mentioned above) the Council may have been a little generous in granting

permission for 09/02252/ful and certainly the permitted proposal must be considered to be on the very cusp of being acceptable. That being said the loss of a further element (and a significant element, as can be seen on drawing 337/20) must result in the proposal being less compliant with policy. The question that the Council has to consider is whether that further loss of part of the original fabric would lead to the conclusion that the proposals result in extensive '*rebuilding*' and the proposal failing to be considered as a conversion.

## 9. Conclusion

After considerable and careful consideration officers concluded that because of the amount of rebuilding that would now be required on this building it could not be considered a conversion. On site there remains one and half walls (the east and west elevations). As such the proposal would not now meet the tests and criteria set out in Policy BD6 of the North Wiltshire Local Plan 2011.

## 10. Recommendation

Planning Permission be REFUSED for the following reason:

The proposal is situated within the open countryside and Lea Conservation Area, where the principle of new dwellings, unrelated to agriculture or forestry, is unacceptable. Due to the amount of rebuilding required to implement it, this application proposal is considered to be a new dwelling in the open countryside rather than a conversion of an existing rural building. As such the proposal is contrary to well established planning policy at the local and national level, particularly Policies C3 (development control core Policy), H4 (Residential development in the open countryside) and BD6 (Re-use of rural buildings) of the North Wiltshire Local Plan 2011.

<b>Appendices:</b>	<b>None</b>
<b>Background Documents Used in the Preparation of this Report:</b>	<ul style="list-style-type: none"> <li>• Application file 10/02174/FUL</li> <li>• North Wiltshire Local Plan 2011</li> </ul>

