

**10. FULL APPLICATION – CHANGE OF USE OF CAMPING BARN TO AGRICULTURAL WORKERS DWELLING AT BUTTERLANDS BARN, GREENHILL LANE, ALSTONEFIELD, (NP/SM/0815/0806, P10789, 412565/356666, 29/11/2015/ALN/CF)**

**APPLICANT: MR ROBERT FLOWER**

**Background**

This application for the conversion of an existing camping barn to an agricultural worker's dwelling was originally considered at the meeting of the Authority's Planning Committee in November 2015. Notwithstanding an officer recommendation of refusal, a motion to defer a decision on this application pending a site visit to Gateham Grange was moved and seconded, and the motion was subsequently carried by the vote. The resolution to visit Gateham Grange was made because the second reason for refusal of this application in the original officer's report (attached as Appendix 1) related to the availability of alternative accommodation at the main farmstead. The reasons for refusal in the original officer's report are as follows:

- 1. The barn occupies a prominent and isolated position in the landscape. The proposals would spoil the character and setting of the barn by the addition of an extension and by the introduction of a domestic use. The proposals are therefore contrary to Core Strategy policies GSP1, GSP2, GSP3, L1 and L3 and saved Local Plan policies LC4 and LC8 and national planning policies in the Framework**
- 2. The proposed development fails to meet criterion (ii) of saved Local Plan policy LC12 as it does not represent the most suitable accommodation in the locality the could reasonably be made available for occupation by the worker concerned, and the application does not propose a sustainable form of development when taking into account the that a less damaging practicable option to meet the needs of the farm exists. The proposals are therefore contrary to the principle of sustainable development set out in Core Strategy policy GSP1 and national planning policies in the Framework.**
- 3. Insufficient information has been provided to establish whether the development would impact upon any sites, features or species of biodiversity importance contrary to Core Strategy policy L2 and Local Plan policy LC17 and national planning policies in the Framework.**

**Gateham Grange**

The applicant and his family operate from their farm at Gateham Grange, which is approximately 800m to the south west of the application site. The family currently live together at Gateham Grange. With regard to officer recommendation of refusal of this application, officers visited the main complex of farm buildings at Gateham Grange with the applicant to determine whether there was a more appropriate option to the current proposal given that the need for a second agricultural worker's dwelling for the farm has been accepted by officers.

There is a substantial two-storey range of barns to the west of the farmhouse at Gateham Grange and in close proximity to the modern sheds associated with the farm business. In addition, there is a second single storey traditional barn on the opposite side of the farmyard which has an enclosed space to the rear which could be used as a discreet and private garden area in association with a residential use. Both of these traditional buildings are of some architectural or vernacular merit and given their position within the main farm yard they are considered to be more appropriate alternatives for animal husbandry purposes being within close sight and sound of the animals whereas the camping barn is remote from the farm buildings.

However, since the meeting of the Planning Committee in November, officers have discussed a fourth barn in the applicant's ownership. This barn also lies in a remote location in open countryside in an elevated and prominent position, and it would need to be provided with a new access track from the road. Nonetheless, this barn is a substantial stone-built two-storey building that has some interesting features and a traditional appearance but is in a relatively poor state of repair and would need a new use before it could be considered viable to invest in its repair and longer-term conservation. However, whilst there may be some merit in considering this barn as a potential candidate for conversion under the Authority's housing policies, officers consider that any proposal to convert this barn to residential use would be open to strong objections on landscape and visual impact grounds.

### **Standing Orders**

In accordance with Standing Order 1.48, this report covers: (i) the policy implications e.g. whether a decision to approve this application would be a major departure from the development plan or other key policy; (ii) the budget implications; (iii) a risk assessment; and (iv) an assessment of the robustness of provisional reasons for a positive decision on this application, including recommendations on any conditions.

### **Assessment**

#### **(i) Policy Implications**

A decision to grant permission for the current application may not be a significant departure from the Development Plan if any resolution to approve this application was based on an assessment of landscape and visual impact that differed from the conclusions reached in the officer report. However, an approval of this application on this basis would conflict with guidance in the Landscape Strategy and Action Plan that advises against the domestication of barns in open countryside because conversion of traditional field barns standing in open countryside to a residential use most often detracts from the scenic beauty and natural qualities of the surrounding landscape and conflicts with the historic settlement pattern of villages on the limestone plateau of the White Peak.

In this respect, members would also need to be satisfied that neither of the barns within the main group of buildings at Gateham Grange provided a less damaging practicable option before the first two reasons for refusal of this application in the original officer's report (as set out above) could be considered to have been properly addressed. Moreover, members should consider the option of a fourth barn in the applicant's ownership that lies mid-way between the camping barn and the main group of buildings at Gateham Grange as well. However, as set out below, a full consideration of alternative options would also be required in this case to begin to address the third reason for refusal of the application not least in terms of applying the three 'derogation tests' to the proposed development and its potentially adverse impact on bats and great crested newts.

In terms of the third reason for refusal, any approval for the current application would be a major departure from the relevant nature conservation policies in the Development Plan and national planning policies in the Framework because there is currently insufficient information to determine whether the proposals would adversely impact on great crested newts, or whether it would be possible to adequately mitigate the potential impact on this species and its habitat. Equally, there is still the possibility that the development proposals would impact on bats.

Bats and great crested newts are also protected by provisions of the Habitats Directive, as implemented by the conservation (Natural Habitats Etc.) Regulations 1994, including three "derogation tests" must be applied by the Authority when deciding whether to grant planning permission for a development which could harm bats or great crested newts (or other European Protected Species). In the absence of appropriate protected species surveys, the Authority is not in a position to determine whether the development proposals would meet the three derogation

tests, which are as follows:

- the activity to be licensed must be for imperative reasons of overriding public interest or for public health and safety;
- there must be no satisfactory alternative; and
- favourable conservation status of the species must be maintained.

(ii) Budget Implications

Primarily, the costs arising from any approval for the current application would be officer time processing the decision notice and the necessary legal agreement. However, in the absence of sufficient information on bats and great crested newts, any approval would be in breach of Regulation 3(4) of the 1994 Regulations which requires all public bodies to have regard to the requirements of the Habitats Directive and the three derogation tests in the exercise of their functions. Therefore, recent case law strongly indicates any approval prior to the necessary survey work have being carried out would be unlawful and open to challenge through the courts.

(iii) Risk Assessment

As set out above, there is a clear risk any approval of the current application would be unsound at this stage with an associated risk that a decision to approve this application would damage the Authority's reputation when taking into account an approval would also breach the 'conservation purpose' of the National Park's designation in terms of failing to appropriately conserve and enhance the National Park's wildlife. There is also an expectation amongst local communities and other communities of interest that the Authority applies policies in the Development Plan neutrally, fairly and consistently, especially where they are up-to-date, relate specifically to the development concerned and are otherwise consistent with more recent national planning policies in the Framework as they are in this case.

A resolution to approve this for a farm worker's dwellings remote from the main farm where the need for a dwelling has arisen would conflict with the long established principle that the operational requirements of a farm mean that a farm worker's dwelling should be within sight and sound of livestock accommodation. The 2015-2016 Annual Monitoring Report would identify whether these issues raise concerns in terms of the consistency and robustness of the Authority's decision making.

(iv) Robustness of Provisional Reasons for Approval and Suggested Conditions

As noted above, if it were to be determined that there were no overriding objections to the current proposals on landscape and visual impact grounds, and it was determined that a more appropriate alternative was not available to the applicant, then the current application could be seen to accord with the Development Plan and national planning policies in the Framework subject to conditions and prior entry into a legal agreement, but the potential impact of the development on bats and great crested newts would remain. In this case, it would not be appropriate to impose a condition requiring survey work and mitigation measures to be agreed before the development is carried out because at this stage; it is not possible to determine what the impacts will be on two separate European Protected Species and their habitats and whether those impacts could be mitigated. Therefore, it is not possible to formulate robust reasons for approval of the current application in the absence of appropriate protected species surveys.

If the application were to be approved, a legal agreement including obligations relating to occupancy criteria for the new dwelling and preventing the separate sale of the new house, the existing farm house and land associated with the farm holding would be required by the

Authority's policies on farm worker's dwelling. In summary, the Authority's housing policies require the proposed development to be maintained as a farm worker's dwelling to meet the operational needs of the farm business at Gateham Grange to justify the approval of an isolated house in open countryside. Therefore, it is considered that the legal agreement would be directly related to the development; and fairly and reasonably related in scale and kind to the development as well as being necessary to make the development acceptable in planning terms. Consequently, the requirement to enter into a section 106 legal agreement before any permission is issued for the current application can be robustly justified.

In terms of conditions, a time limit for commencement would be required and a condition specifying the approved plans would be necessary in the interests of the proper planning of the local area. It would also be necessary to require the conversion to be completed in the existing shell of the building with any building works being limited to the proposed extension not least because permission would be granted for conversion of an existing building rather than a newly-built house in open countryside. Similarly, it would be necessary to specify minor design details such as materials for the extension, details of windows and doors, and rain water goods to ensure the completed development continues to look like a converted barn.

Finally, Planning Practice Guidance says that permitted development rights should not be removed other than in exceptional circumstances. In the first instance, it is considered necessary to remove permitted development rights for extensions and outbuildings in accordance with the Authority's adopted policy because it is important to ensure the size of the house remains commensurate with the needs of the farm business and remains available to the farming community on terms of its value. It would also be important to manage future alterations to the property to minimise the impact of the proposed development and safeguard the character of the surrounding landscape.

It is therefore considered that the exceptional circumstances do exist in this case that justify removing permitted development rights if permission were to be granted for the current proposals in the event that survey work demonstrated that the impacts of these proposals could be mitigated, and appropriate mitigation measures could be secured by a planning condition.

## **Conclusions**

In conclusion, the Planning Committee is respectfully urged to refuse planning permission for the current application for the reasons cited above and in the original officer's report, noting that officers consider any approval for this application would be a departure from the Development Plan and would be open to challenge in the absence of adequate information on bats and great crested newts. However, in the event members considered this application was acceptable other than in terms of the potential impact of the proposed development on these protected species and their habitats, it is recommended that the application be de-registered pending the submission of appropriate protected species surveys and mitigation measures under the provisions of the Town and Country (Development Management Procedural) Order 2010, as amended.

## **Human Rights**

Any human rights issues have been considered and addressed in the preparation of this report.

List of Background Papers (not previously published)

Nil