

AGENDA ITEM NO. 4

PLANNING COMMITTEE

Wednesday 11 February 2009

This application is reported to Members because of objections received from Evenwood and Barony Parish Council.

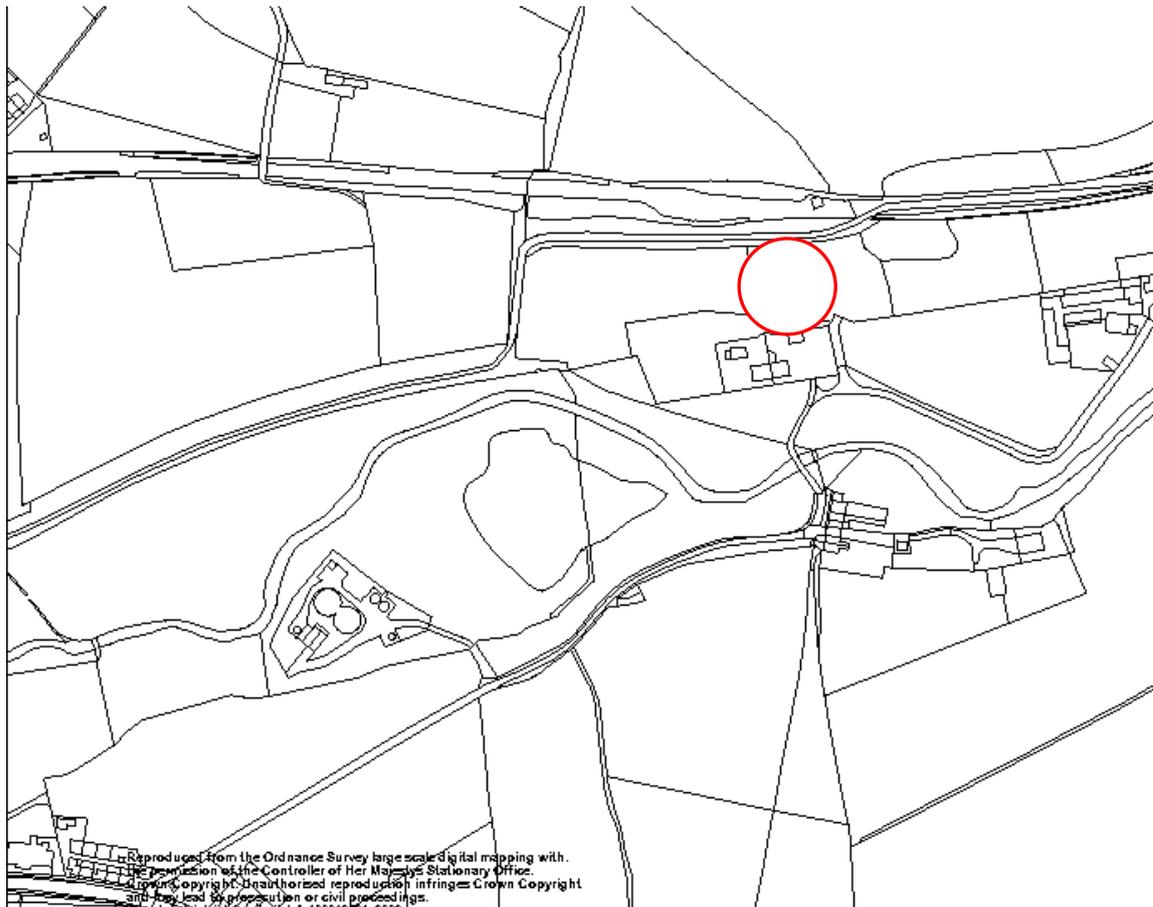
Members will recall that this application was deferred at their Planning Committee meeting on the 14th January 2009. The Officer's recommendation remains the same and Members should now be in a position to determine the application.

Case Officer - Matthew Gibson

EVENWOOD & BARONY - 6/2008/0292/DM

Erection of replacement dwelling at 9 The Mill, Ramshaw for Mr Harold Wilkinson (15 July 2008).

THE SITE:



The application site lies to the east of Ramshaw in the open countryside. It lies on a gently sloping plot immediately to the north of 7 & 8 The Mill, Ramshaw. Agricultural land surrounds the site. There is an existing two storey detached building on the site. It is constructed of stone with a slate roof (parts missing). A portion of the curtilage is

defined by a stone wall whilst other parts run directly into the agricultural field. The access to the property is over an unadopted track which serves various other dwellings. There is currently no formal access from this track to the existing building.

THE PROPOSAL:

This application seeks consent to demolish an existing building, which was once occupied as a dwelling, and replace it with a two storey dwelling with garage. The proposal will involve significant alterations to the site to also provide an access, courtyard, curtilage and means of enclosure. The proposed dwelling is larger than the current building, but occupies a similar footprint and has been designed to be in keeping with the existing building in terms of materials and style.

PLANNING HISTORY:

Two previous applications have been withdrawn for various reasons including an objection from the Environment Agency. (2007/0317 & 2007/0573)

Approval was granted in March 1967 for change of use from a dwelling to agricultural storage.

PLANNING POLICY:

GD1	General Development Criteria
H9	Re-building of dwellings outside settlement limits
ENV15	Development within flood risk areas
ENV1	Protection of the Countryside

REPRESENTATIONS:

Statutory and Internal Consultees:

Evenwood and Barony Parish Council – raise a number of concerns including:

- Does the location of the proposed dwelling meet with planning policy H9?
- Mature trees and shrubs were removed, was permission given?
- Who built the defence bund? Is it fit for purpose?
- Was permission given for the access road? Is the application invalid?
- Concerns about flooding, can guarantees be given that this would not occur again?
- Object to the proposal as it stands. More consultation between residents, planning and the Environment Agency needs to take place.

Environment Agency – No objection subject to inclusion of a number of conditions. Response is summarised in the report.

Highways – No objection subject to a condition requiring construction of passing place.

Public Responses:

A total number of 4 objections were received. Below is a summary of the objections

- (a) The ditch in front of the property was dug by the Environment Agency as part of extensive flood defences. Is this safe when in such close proximity to the

dwelling? However the ditch can not be filled in as it would totally compromise our flood defences. Surely the safety of the existing homes are paramount over a derelict building.

- (b) A property in this position will increase the risk of flooding to other neighbouring properties (photos included)
- (c) The occupier of 8 The Mill, Ramshaw has occupied the property for over 37 years and enjoys the fact that the property is not overlooked.
- (d) The proposed development will devalue 8 The Mill, Ramshaw.
- (e) Bats and owls have roosted in the old house. However work has been carried out over the last six months to the property which I feel will have compromised their roosting pattern.
- (f) Hedges and trees have been removed and boundaries altered.
- (g) A change of use application was approved in 1967 for storage of hay and cattle.
- (h) The property had no defined access until approximately 2004
- (i) The new property will result in a reduction of privacy.

Extensive information has been received from objectors notably from the occupiers of number 7, The Mill, regarding the issue of abandonment. The objections include photographs to demonstrate the objector's points.

Two letters of support have been received. The following is a summary of the letters which can be viewed, in full, on file.

- (j) Development of this property would be beneficial to the area because it presently represents an eye sore.

PLANNING CONSIDERATIONS:

Principle of development and abandonment

Visual Impact

Flood Risk

Residential Amenity

Access

Principle of development and abandonment

The application site lies in the open countryside as defined by the Teesdale District Local Plan. Policy H6 of the Teesdale District Local Plan seeks to ensure that new dwellings in the countryside are not permitted unless they are required for agricultural or forestry workers and their need can be justified. In this case, however, a building stands on the site and it was once occupied as a dwelling. Policy H9 of the Teesdale District Local Plan refers specifically to rebuilding of existing dwellings.

Before the merits of this proposal are discussed in relation to this policy it must first be established if the building has lost its existing use rights as a dwelling through abandonment. It is also important to consider on balance, the other potential impacts of the proposed development in conjunction with this issue to ensure a full assessment of the actual suitability of a dwelling in this location is carried out.

Abandonment is not a concept embodied in planning law but has arisen out of court judgements. Any judgement remains a matter of fact and degree. In the case *Castell-Mynach Estates v Secretary of State for Wales and Taff Ely Borough Council (1985)*

four tests were laid down to establish whether abandonment had taken place. In summary, the tests are as follows:

- (1) Physical condition of the premises;
- (2) Period of non-use;
- (3) Whether there has been any intervening use; and
- (4) Evidence regarding owner's intentions.

It is essential in determining this application that the relevant tests be applied. It should be noted that these tests are not listed by priority and no one test is given greater weight over the others. The following points should be noted in this instance in relation to each of the four tests:

- (1) The applicant's agent has submitted a structural survey as supplementary information to this application. The survey concludes that despite the required works being costly, it is possible to repair the property and return it to a habitable dwelling.
- (2) There are some discrepancies as to the length of time that the property has been vacant. No one piece of evidence has been submitted which confirms the exact date to which occupation ceased. It is estimated to have been in the region of 35 to 50 years ago. A considerable period of time has therefore elapsed since the property was last occupied as a dwelling.
- (3) In a letter from Durham County Council (dated 24 May 2006) Mr D Hutchinson, Senior Estates Officer, states that: *"This house was originally purchased by the County Council in 1975 as part of the old railway network. The house was boarded up to prevent vandalism and unauthorised entry. It was intended that the house and adjoining paddock would be sold off when it was known which land was needed for the railway walk however this did not happen until 2005. The house was not used for any other purpose other than a single dwelling but has remained unoccupied since acquired by the County Council."* It seems therefore that the County Council can verify that the property was secured with the aim of preventing trespass, entry by animals or damage from weather.
- (4) It is evident that the applicant has recently purchased the property and therefore his intentions are of no relevance in determining whether the property had been abandoned, but those of the previous owner are most relevant. The letter from the County Council as quoted above at (3) suggests that the property was secured and it was intended for it to be sold off once the relevant works were undertaken to the surrounding land. The letter does not explicitly state that it was the County's intention to sell the property as a dwelling but since, during the time the County Council owned the property, it had never been used for any other purpose, nor had the County Council been aware of any other planning consents or sought planning consents, it can be assumed that it was intended to be sold as a dwelling house.

It should be noted that late in the application process information was received from one of the objectors pointing to a material change of use application given consent in March 1967. The application applied to change the use of the dwelling to "storage for hay and cattle". Although this indicates that a potential intervening use was sought, the fact stands that the property remains to this day in the physical form of a dwelling. There is also limited information from that time as to whether the permission was required and whether it was actually implemented. Also for consideration is the intention of the County Council once the property was in their ownership, as has been discussed previously. The period of time the property was vacant for is considerable but the

County Council in their lengthy period of ownership maintained the property and never took the decision to demolish it, indicating an intention to sell as a dwelling house.

Legal advice has been sought to clarify the position with regard to the issue of abandonment. In summary, this advice suggests that “although the permission is evidence suggesting a new use, it is evidence easily counter-balanced by facts on the ground e.g. no changes to the structure, and, more to the point, no evidence of changes in actual function or use”. It further expands this by stating that “the strongest matter in favour of a continuing dwelling house use at present seems to be the lack of alterations to the structure and the fact that the building was until recently substantially intact (confirmed by the structural report). If this is the case it is difficult to conclude without good evidence of other or no uses that the dwelling house use has not continued”.

It is concluded that the building is structurally sound and able to be renovated (at some considerable cost) but has been unoccupied for a considerable period of time. The evidence presented by Durham County Council in their letter dated 24 May 2006 is most relevant and can be afforded some weight when considering this application. This letter confirms that during their ownership there has been no intervening use and that there was always an intention that the property be returned to residential use. On balance it is considered that the above points suggest that the dwelling has not been abandoned and therefore its use rights for residential use are protected.

As previously noted, policy H9 of the Teesdale District Local Plan refers specifically to the rebuilding of existing dwellings. It states that where buildings are beyond economic repair the erection of a replacement dwelling will be allowed subject to a number of criteria. This proposal for a replacement dwelling accords with the criteria on the following basis:

- (A) A report has been submitted by a structural engineer to demonstrate that the existing building is capable of repair but that the repairs are not economical.
- (B) The replacement dwelling is proposed to be of a similar size and proportion to the building that it will replace.
- (C) The replacement dwelling is proposed to be erected on the site of the existing dwelling.
- (D) The details of the proposal reflect the original dwelling in terms of layout, design, materials, and access in so far as a modern building and living requirements allow.

It is considered overall that the proposal accords with policy H9 of the Teesdale District Local Plan.

Visual impact

Policy H9 of the Teesdale District Local Plan also seeks to ensure, amongst other details, that any replacement dwellings in the countryside are of a similar size and proportion to the dwelling which is intended to be replaced.

The proposed replacement dwelling has been designed to reflect the style, materials, form and character of the derelict building that currently occupies the site. The proposed dwelling is somewhat larger, but the increase in its footprint is considered to be acceptable given that it reflects the scale and proportions of the footprint of the building that currently stands on the site.

The plans lack detail of the design. Therefore if approval is granted for this application it would be important that conditions be imposed to ensure a satisfactory finish to the building.

The proposed replacement dwelling is a similar size and proportion to the dwelling which is intended to be replaced in accordance with policy H9 of the Teesdale District Local Plan.

Flood risk

This application has been the subject of detailed consultation with the Environment Agency, who have also been in dialogue with neighbouring properties. The response from the EA states that the site is within flood zone 3 with an annual 1 in 100 year probability of flooding, and is therefore at high risk of flooding. However, as the application proposes a rebuild of an existing dwelling with only a small increase in footprint, then the principle of development has been agreed.

The Agency has requested the inclusion of conditions which are intended to not only protect the amenity and safety of the applicants but also the amenity of the neighbouring properties. The information required to satisfy these conditions will be assessed and only approved if deemed sufficient and acceptable in detail.

Residential amenity

The occupiers of the two closest properties (7 & 8 The Mill, Ramshaw) have both objected to the proposal. The letters of objection all refer to the harmful impact to the complete privacy that these properties currently enjoy. It is accepted that the occupation of a replacement dwelling on this site would significantly alter the seclusion currently offered to these properties. Nonetheless the proposed replacement dwelling would be in excess of 35 metres from the existing properties and therefore adequate levels of privacy could be afforded to both the occupiers of the existing properties and any future occupiers of the proposed dwelling.

The proposal includes adequate levels of private amenity space within the curtilage of the proposed replacement dwelling.

The proposed development will protect the privacy of the existing properties and provide adequate levels of residential amenity for its potential occupants in accordance with policy GD1 of the Teesdale District Local Plan.

Access

County Highways have been consulted on the proposals, responding that, because the application is for a replacement dwelling, the same amount of traffic would be generated along the private access track as would be if the existing dwelling was renovated. Therefore it is suggested that if a condition is imposed to ensure the passing place is constructed then no highway objection can be raised.

In conclusion, giving consideration to all of the factors and taking full account of the information and views submitted by the objectors, the application for a replacement dwelling is considered acceptable in accordance with the relevant policies contained in the Teesdale District Local Plan. Therefore, conditional approval is recommended.

PLAN Nos AND DATE RECEIVED: (15/07/08)

Hw/06 – Site location
Hw/06/01 – Elevations and plans as existing
Hw/06/01A – Proposed elevation and plans
Hw/06/02A – Proposed site layout
PP-00443035 – Proposed access and passing point

RECOMMENDED: That approval is granted subject to the following conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby approved shall be carried out wholly in accordance with the details contained in the application as submitted to the Council on the date specified in Part 1 of this decision notice unless otherwise firstly approved in writing with the Local Planning Authority.

To ensure the development is carried out in complete accordance with the approved plans.

3. Notwithstanding the provisions of Article 3 and Classes A,B,C,D,E and F of Part 1 and Classes A and B of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended or any re-enactment thereof) none of the categories of development described therein shall be carried out on site without an application for planning permission having first been made to and approved in writing by the local planning authority.

To enable the local planning authority to retain control over the development in the interest of flood risk.

4. Finished floor levels must be set no lower than 129m above Ordnance Datum (AOD).

To protect the development from flooding.

5. The permitted development will be carried out in full accordance with the plans submitted (Drawing No. HW/06/02A received 8 September 2008)

To prevent displacement of floodwater.

6. There shall be no storage of any materials including soil within that part of the site liable to flood as delineated on the Environment Agency flood map.

To ensure that there will be no increased risk of flooding to other land/properties due to impedance of flood flows and / or reduction of flood storage capacity.

7. There shall be no raising of existing ground levels on the site.

To prevent the increased risk of flooding due to impedance of flood flows and reduction of flood storage capacity.

8. Any fencing constructed within or around the site shall be designed to be permeable to flood water.

To prevent obstruction to the flow and storage of flood water, with a consequent increased flood risk.

9. There must be no earthworks undertaken to the flood defence scheme.

To ensure the engineered flood alleviation scheme is not adversely affected.

10. Development shall not commence until details of a safe exit route, not adversely affecting the flood regime, to land outside the 1 in 100 year flood plain, are submitted to and approved in writing by the local planning authority. This route must then be in place before any occupancy of the buildings.

To provide safe access and egress during flood events and reduce reliance on emergency services.

11. No development approved by this permission shall be commenced until a scheme for the provision and implementation of a surface water regulation system has been submitted to and approved in writing by the local planning authority. Such a scheme shall be implemented to the reasonable satisfaction of the local planning authority prior to the construction of any impermeable surfaces draining to the system.

To prevent increased risk of flooding.

12. No development approved by this permission shall be commenced until a scheme for the provision of water proofing methods including fittings and building services has been submitted to and approved in writing by the local planning authority.

To ensure that construction can sustain inundation and can provide waterproof protection up to the 100 year flood event.

13. Notwithstanding the information shown on the submitted application, samples of all materials to be used externally shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development, and thereafter the development shall be carried out in accordance with the approved samples.

To protect the visual amenity of the surroundings and the character of the building in accordance with Policies GD1 and H9 of the Teesdale District Local Plan 2002.

14. A sample panel of stonework of minimum size one metre by one metre shall be constructed at the site, approved in writing by the Local Planning Authority prior to commencement of walling works and thereafter retained until completion of the development hereby approved. All stonework relating to the development hereby approved shall match the approved sample panel of stonework.

In the interests of the visual amenity of the area and in accordance with Policies GD1 and H9 of the Teesdale District Local Plan.

15. No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include (proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc indicating lines, manholes, supports etc); retained historic landscape features and proposals for restoration, where relevant).

To achieve a satisfactory form of development and to prevent obstruction to the flow and storage of flood water, with a consequent increased flood risk.

16. All demolition materials shall be removed from the defined 1 in 100 year flood area within 28 days of the demolition works being undertaken.

To prevent obstruction to the flow and storage of flood water, with a consequent increased flood risk.

17. No development shall take place unless in accordance with the mitigation detailed within the protected species report (Plate Layer's Cottage 9 The Mill Ramshaw, Evenwood, Co Durham, Veronica Howard, June 2007) including, but not restricted to; adherence to timing and spatial restrictions; adherence to precautionary working methods; provision of crevice roost sites within the new building.

To conserve species protected by law.

18. The dwelling hereby approved shall not be occupied until the passing place 'A' detailed in plan PP-00443035 has been completed.

In the interests of highway safety.

INFORMATIVES

Any works within 5 metres of the main river or the flood defence scheme will require prior written consent from the Environment Agency under the Water Resources Act 1991.