18 DCNW2004/0429/F - RECONSTRUCTION OF DEMOLISHED COTTAGE AT MOSELEY COTTAGE, PEMBRIDGE, LEOMINSTER, HEREFORDSHIRE, HR6 9HY

For: Mr R L Norman & Miss P Hulme per David Taylor Consultants, The Wheelwright's Shop, Pudleston, Leominster, Herefordshire HR6 0RE

Date Received:
6th February 2004

Ward:
Pembridge & Lyonshall with Titley

Grid Ref:
37995, 58756

Expiry Date:
2nd April 2004

Local Member: Councillor R Phillips

1. Site Description and Proposal

1.1 The site known as Moseley Cottage comprises a 0.436 hectare plot consisting of the remnants of a derelict red brick, stone and slate cottage within an area of mixed vegetation, scrub, semi-mature and mature trees.

1.2 The site of the cottage itself is well screened from the surrounding open countryside and the public footpaths which run to the east and south of the wooded area.

1.3 The site is otherwise surrounded by agricultural land comprising the holding known as The Leen and is accessed via an unmetalled track which serves the main farm complex some 870 metres to the north-east and a number of other private residences.

1.4 To the south of the site is Moseley Common, a Site of Special Scientific Interest. It lies within the flood plain of the River Arrow and the access track cuts across a Scheduled Ancient Monument (North Herefordshire Rowe Ditch) which is located at some distance to the east of the derelict cottage.

1.5 Planning permission is sought for the reconstruction of the derelict cottage to provide a 3 bedroom dwelling utilising a similar but slightly larger footprint. The elevation treatments seek to reflect the character and appearance of the former cottage.

2. Policies

Government Guidance
PPG 25 – Development and Flood Risk

Hereford & Worcester County Structure Plan
H16A Housing in Rural Areas
H20 Housing in Rural Areas Outside the Green Belt
CTC 4 Nature Conservation
CTC 5 Archeaology

Leominster District Local Plan (Herefordshire)

A1 Managing The District's Assets And Resources
A2(D) Settlement Hierarchy
A4 National Nature Reserves And Sites Of Special Scientific Interest
A6 Sites Of Local Importance For Nature Conservation
A9 Safeguarding The Rural Landscape
A15 Development And Watercourses
A16 Foul Drainage
A22 Ancient Monuments And Archaeological Sites
A24 Scale And Character Of Development

Herefordshire Unitary Development Plan (Deposit Draft)

S1 Sustainable development
S2 Development requirements
DR1 Design
DR7 Flood risk
H7 Housing in the countryside outside settlements
NC3 Sites of national importance
NC4 Sites of local importance
ARCH3 Scheduled Ancient Monuments

3. Planning History

3.1 None identified.

4. Consultation Summary

Statutory Consultations

4.1 Environment Agency – objects to the proposal on the grounds that the site lies within the flood plain of the Curl Brook and is at risk of flooding. The proposal would result in the loss of flood flow and storage and increase the risk of flooding elsewhere.

4.2 Ramblers Association - comments awaited.

4.3 Open Spaces Society - comments awaited.

4.4 Herefordshire Wildlife Trust - comments awaited.

Internal Council Advice

4.5 Head of Engineering and Transportation – raises no objection.

4.6 Public Rights of Way Manager - raises no objection.

4.7 The Chief Conservation officer raises no objection with regard to the impact of the proposal upon the Scheduled Ancient Monument Comments with respect to the designated Site of Special Scientific Interest and Special Wildlife Site are awaited

5. Representations

5.1 The applicant has submitted a letter which can be summarised as follows :

'The applicants father dismantled the cottage in about 1980 because it was vacant and subject to vandalism and trespass, with potential liability. It remains on site and garden boundaries are evident within an area of what is now overgrown wasteland. It was occupied as a normal dwelling (not as an agricultural workers dwelling on the farm) until the mid 1970's.'

5.2 In addition, photographic evidence is attached with the letter and confirmation in respect of the potential for compensation through a Purchase Notice under Section 137 of the Town and Country Planning Act 1990 (as amended).

5.3 The implications of this are discussed at paragraphs 6.9 and 6.10 of the Officers Appraisal.

5.4 Pembridge Parish Council - comments awaited.

5.5 The full text of these letters can be inspected at Northern Planning Services, Blueschool House, Blueschool Street, Hereford and prior to the Sub-Committee meeting.

6. Officers Appraisal

6.1 The site occupies an isolated position within open countryside and as such Policy A2(D) of the Leominster District Local Plan (Herefordshire) would apply. The application is submitted in the form of the reconstruction of the demolished cottage and as such can only be considered in connection with the replacement dwelling criteria.

6.2 This establishes that the new dwelling should be comparable in size with and within the curtilage of an existing building with established use rights. It is considered that having regard to Ordnance Survey plans, the proposal is comparable in size to the former cottage and would be sited within what would have been a defined residential curtilage. The reality is however that there is no discernable curtilage. However in this case there is a more fundamental point of principle at stake, which is the established use rights of the building.

6.3 A number of tests can be applied in reaching a conclusion on this complicated legal matter and these are:

a) the physical condition of the building in question;
b) the length of time that the residential use has ceased;
c) the intention of the owner/occupier and;
d) any intervening uses.

6.4 In this case, the complete derelict state of the former cottage is an overriding issue since it has no standing walls or roof structure and only the very limited remains of the front face of the cottage visible, which has become completely overgrown. The remains of the rest of the fabric of the cottage otherwise lay strewn about in close proximity to the former cottage site.

6.5 The application confirms that the cottage has not been occupied since approximately 1977 and furthermore there appears to have been no intention by the applicant to resurrect the cottage in the intervening years. The evidence provided indicates that the cottage was intentionally demolished due to concerns over trespass and vandalism and possible liability to the farm.

6.6 The final test relates to evidence of any intervening uses for which there is none but in view of the above it is considered that the residential use has been abandoned and as such the proposal, in the absence of any other exceptional circumstances, would be contrary to policy A2(D).

6.7 In addition to this point of principle, the re-establishment of a new curtilage associated with the dwelling, ancillary buildings and other domestic paraphernalia would significantly change the character and appearance of the site and its immediate surroundings.

6.8 In view of the comments received from the Environment Agency and in the absence of a Flood Risk Assessment to determine otherwise, it is considered that the proposed new dwelling and its occupants would be put at risk during a flood event and also that a new dwelling would effect existing flood flows and increase the risk of flooding elsewhere. Accordingly the proposal would be contrary to Policy A15 of the Leominster District Local Plan (Herefordshire) and the guiding principle set out in PPG 25 – Development and Flood Risk.

6.9 It is advised that there are potential legal implications associated with the refusal of planning permission since the applicant could pursue a Purchase Notice seeking compensation from Herefordshire Council. Section 137 of the Town and Country Planning Act 1990 (as amended) establishes that a successful submission would require a case to be made that the land in question is not capable of reasonable beneficial use. A similar case is being considered at present at a site known as 85 Tower Hill Cottage, Dormington. The Council's response in this instance is that the associated land could have a beneficial use for agricultural or forestry purposes or for amenity space/private woodland. It is considered that this would be a defensible position with regard to the Moseley Cottage site.

6.10 Notwithstanding the above, it is not considered that the prospect of possible legal proceedings, pursuant to Section 137 of the Act, is a material consideration that should be given significant weight such that the overriding presumption against residential development should be outweighed.

RECOMMENDATION

That planning permission be refused for the following reasons:

1. **The former cottage by reason of its physical condition, the length of non-occupation and the lack of evidence relating to an intention to retain the structure in residential use is considered to have lost its residential use rights. The proposal, in the absence of any other exceptional circumstances, would therefore be contrary to Policy H20 of the Hereford & Worcester County Structure Plan and Policy A2(D) of the Leominster District Local Plan (Herefordshire).**

2. **The reconstruction of a dwelling with its resultant pressures for ancillary development and re-creation of a residential curtilage would have a detrimental impact on the character and appearance of the site and its immediate surroundings that would be contrary to Policies H16A and CTC9 of the Hereford & Worcester County Structure Plan and Policies A1, A9 and A24 of the Leominster District Local Plan (Herefordshire).**

3. The site lies within the Indicative Flood Plain of the Curl Brook, and in the absence of a Flood Risk Assessment, it is considered that it would result in an unacceptable loss of flood flow and storage capacity that would result in an increased risk of flooding elsewhere. The proposal would therefore be contrary to Policy A15 of the Leominster District Local Plan (Herefordshire) and the guiding principles established in PPG 25 - Development and Flood Risk.

Decision: .....

Notes: .....

.....

Background Papers

Internal departmental consultation replies.