

**17 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 Roger Phillips

Introduction

This application was deferred at the Northern Area Planning Committee on 16 June 2004, in order to further clarify the legal implications associated with Purchase Notice procedures. In addition to this the applicant has sought to resolve the concerns raised by the Environment Agency.

The attached report has been updated to take account of the above.

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 (Revised 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. This objection is maintained, following the submission of ground level information received on 22 March 2004. It is suggested that the anecdotal evidence is not sufficient to outweigh the objection, in the absence of a Flood Risk Assessment.
- 4.2 It is advised that since the receipt of the abovementioned objections the applicant has been in correspondence with the Environment Agency. This resulted in the receipt of a letter from the Agency on 15 October 2004. The letter maintains its objection to the proposed development stating that in the absence of a hydraulic survey to model the watercourse, the site and its proposed access remain at risk of flooding during a 1% annual probability flooding event.

- 4.3 The applicant has not to date submitted a Flood Risk Assessment that satisfies the Environment Agency and as such the original comments remain valid.

Internal Council Advice

- 4.4 Head of Highways and Transportation – raises no objection.
- 4.5 Public Rights of Way Manager – raises no objection.
- 4.6 The Chief Conservation Officer raises no objection with regard to the impact of the proposal upon the Scheduled Ancient Monument.

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 raise no objection.
- 5.5 A further letter has been received from Mr F L Smith of Leenfields, Pembridge. He is the grandfather of R L Normal and comments that during the 80 years he has known the site it has not flooded. Allowing permission will enable two young people who can't afford to buy at present prices in the area to build and get married.
- 5.6 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 proposal does not meet any of the relevant criteria set by this policy. No case is submitted seeking to justify a dwelling through the needs of the farming enterprise or as a scheme of affordable housing, meeting the necessary policy requirements. Furthermore, this cannot be regarded as a conversion proposal, due to the condition of the building, and cannot be considered in connection with replacement dwelling criteria.

- 6.2 Replacement dwelling policy requires that the new dwelling should be comparable in size with and within the curtilage of an existing building with established use rights. Evidence has been supplied, showing the remains of a structure. Clearly, these remains do not amount to an existing building with habitable use rights.

The following information is set out so that Members are clear on the subject of abandonment.

- 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. The reconstruction of the dwelling would require major rebuilding work which, in the absence of any other justification, would, as a matter of principle, be contrary to Policy A2(D) of the Leominster District Local Plan (Herefordshire).
- 6.5 The application confirms that the cottage has not been occupied since approximately 1980 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. It is considered that any doubts about the long term intentions of the applicant would almost certainly be outweighed by the complete derelict state of the cottage, which would reasonably lead to acceptance of abandonment.
- 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. Accordingly, this proposal is for the erection of a new dwelling in open countryside.
- 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 and, furthermore, in the absence of any special circumstances, a new dwelling in such an isolated location is regarded as an unsustainable form of development.
- 6.8 In view of the comments received (both original and revised), from the Environment Agency and in the continuing 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, and referred to in the applicants submissions, 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. It is stressed that this possible course of action should not influence the Local Planning Authority in terms of making decisions in accordance with Adopted Plan Policy. However, for information purposes only it is advised that the Purchase Notice procedures require an applicant to successfully make a case that the land/buildings in question are not capable of reasonable beneficial use. It would be a legitimate defence for the Local Planning Authority to suggest that the land could be used for agricultural or forestry purposes.
- 6.10 A recent case relating to a site known as 83 Tower Hill Cottage, Dormington has parallels to this particular situation and it is advised that the Local Planning Authority was successful in defending its position with the appeal being dismissed.
- 6.11 It is not considered that the prospect of possible legal proceedings is a material consideration that should be given significant weight such that the overriding presumption against residential development should be outweighed. The Council has thus far been successful in defending its position with regard to the abandonment of cottages in the open countryside and, whilst each of these cases must be judged upon its merits, there is nothing to distinguish Moseley Cottage from the numerous other cases of this kind. It is considered that this would be a defensible position with regard to the Moseley Cottage site.

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. In the absence of any other exceptional circumstances to justify a new dwelling in this location, it is regarded that its isolated location and complete reliance upon the use of private car would result in an unsustainable form of development, contrary to Policy A1 of the Leominster District Local Plan (Herefordshire) and the emerging Policy S1 of the Herefordshire Unitary Development Plan (Revised Deposit Draft).**

- 4. 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 and in the absence of clear evidence relating to a dry access to the site there would be an increased risk to human life. 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.