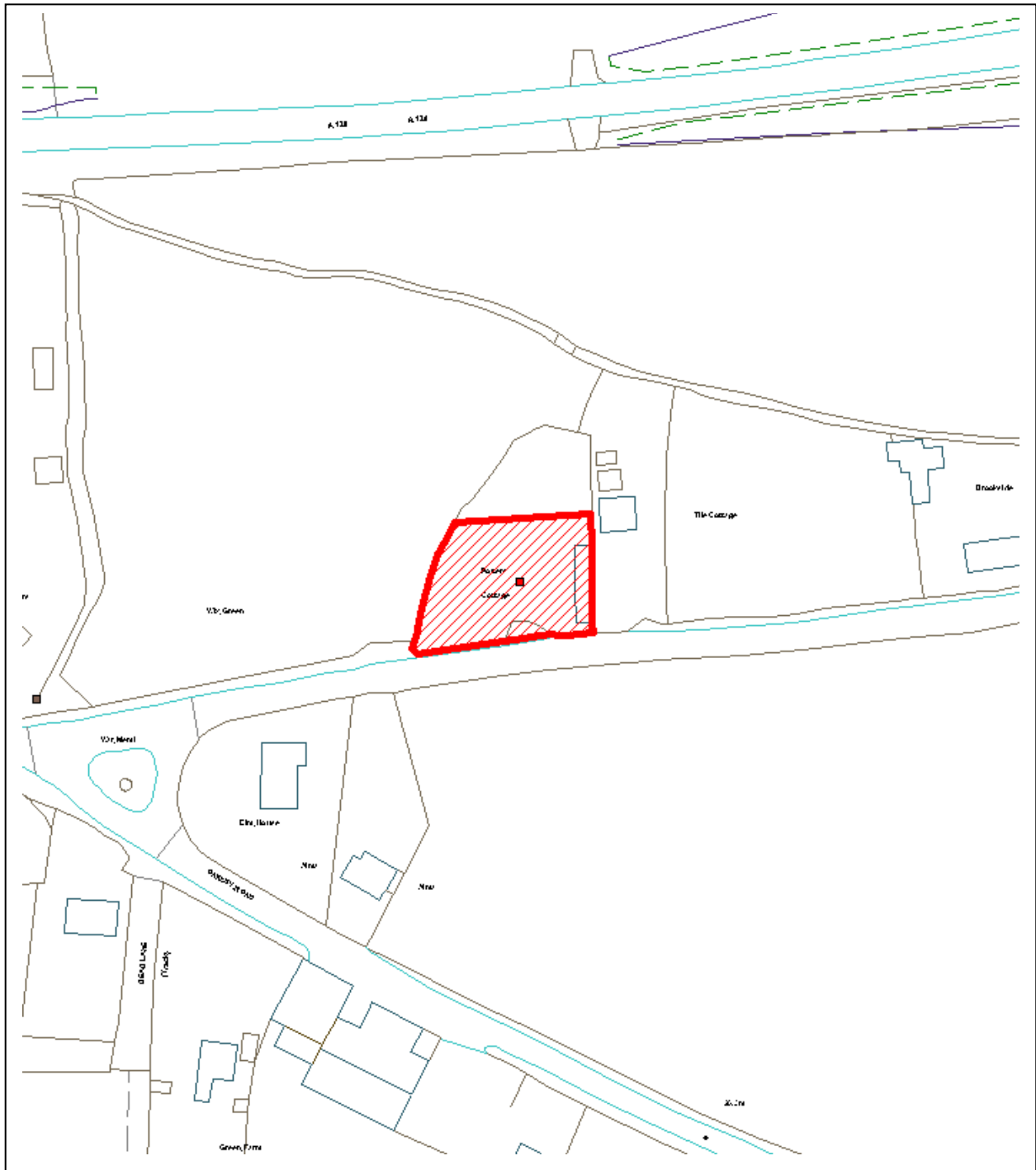


PLANNING COMMITTEE

18 October 2011

REPORT OF THE TEMPORARY HEAD OF PLANNING

**A.5 PLANNING APPLICATIONS - 11/00958/FUL - POTTERS COTTAGE , HARWICH ROAD, WIX, MANNINGTREE, CO11 2SA**



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<b>Application:</b>	11/00958/FUL	<b>Town / Parish:</b> Wix Parish Council
<b>Applicant:</b>	Dr Z Moonflower	
<b>Address:</b>	Potters Cottage Harwich Road Wix, CO11 2SA	
<b>Development:</b>	Erection of single storey dwellinghouse (relocation and retention of existing building).	

## 1. Executive Summary

- 1.1 This application was deferred from the 20<sup>th</sup> September 2011 Planning Committee Agenda by Officers to allow the applicant additional time to provide supporting information.
- 1.2 The application seeks the retention and relocation of an unauthorised dwelling. The site has been subject to an extensive planning history with a succession of applications being received for new or replacement dwellings. All applications have been refused. Planning appeals were dismissed for a new dwelling in 2006 and for the retention of the existing dwelling in 2009. The Planning Committee authorised prosecution for the non-compliance of an enforcement notice to secure the removal of the building on site and in May 2011 the applicant was found guilty of non-compliance with the enforcement notice and fined as a result.
- 1.3 The application site is outside any defined settlement boundary where policies of constraint apply. Policies seek to protect the character of the countryside and new dwellings without special justification for a rural location are unacceptable in principle. No such justification has been put forward. Both government guidance and local plan policies seek to secure sustainable development by focusing new residential development within defined settlement boundaries. This proposal is, therefore, in an unsustainable location.
- 1.4 The area is rural in character and largely undeveloped. The introduction of a new building is considered to be obtrusive in such surroundings and its retention would, therefore, adversely affect the character of the area.
- 1.5 This application differs from previous schemes by virtue of proposing relocation of the unauthorised building to a near central position within the site. Whilst relocation of the building reduces the impact upon neighbouring amenity and thus removes a previous reason for refusal, such a revision does not overcome or outweigh the fundamental objection in principle to a new dwelling in this location.
- 1.6 Significant weight must also be given to the most recent appeal decision which considered the proposals against the same government guidance and local plan policies as set out in this report. In dismissing the appeal in 2009 the inspector stated that the development conflicted with long established settlement and countryside policies and caused harm to the countryside. Any departure from the well-established position to refuse exposes the Council to challenge by way of a Judicial Review.
- 1.7 Accordingly there are no new material planning considerations that give weight to a decision other than a refusal.

**Recommendation: Refuse**

**Reason for refusal:**

The proposed development is contrary to policies QL1, QL2, QL9 (i), (ii) & (iii) QL11(i) & (ii), HG1, HG3, EN1, RA4 and COM6 of the Tendring District Local Plan (2007) (Local Plan); and the guidance in PPS1 (Delivering sustainable Development), PPS3 (Housing) and PPS7 (Sustainable Development in Rural Areas) relating to sustainable development in rural areas.

These policies and guidance statements seek to secure sustainable development, protect the amenities and character of the countryside and to require that all new development relates satisfactorily to its surroundings in terms of its siting, appearance in the locality and relationship with neighbouring properties. New residential development should be provided within defined settlements where there is good access to local services by a range of modes of transport; in particular, proposals should minimise the need to travel, especially by private motor-car. Isolated new dwellings are only acceptable where there is special justification.

In this case, the proposal is located in the countryside in a remote location outside of any settlement limits as defined in the Local Plan. In such rural locations new residential development without any special justification is unacceptable as a matter of principle. The site is remote from centres of population, there is limited access to public transport and access to local services would be largely dependent on occupiers of the new dwelling having access to a private motor-car. The proposal would, therefore, be contrary to the guidance in PPS1, PPS3 and PPS7 and policies QL1, QL2, HG1, HG3 and RA4 of the Local Plan.

The surroundings of the site are rural in character and largely undeveloped. The introduction of a new built structure is obtrusive in such surroundings and it and the domestic paraphernalia accompanying the residential use of the site detracts from the rural character of the area, contrary to policy QL9 (i). (ii) & (iii).

Policy COM6 of the Tendring District Local Plan (2007) states that residential development below 1.5 hectares in size, where existing public open space facilities are inadequate, shall provide a financial contribution towards the provision of new or improved off-site facilities to meet the projected needs of the future occupiers of the development. Wix is identified within the Supplementary Planning Document for Policy COM6 (May 2008) as a village with a current deficit in equipped play. No such contribution has been included within this application and it is therefore contrary to Policy COM6 of the Tendring District Local Plan (2007).

**2. Planning Policy**

**National Policy:**

- PPS1 Delivering Sustainable Development
- PPS3 Housing
- PPS7 Sustainable Development in Rural Areas

**Regional Policy**

- SS1 Achieving Sustainable Development
- SS2 Overall Spatial Strategy
- ENV7 Quality in the Built Environment

## Local Plan Policy:

QL1	Spatial Strategy
QL2	Promoting Transport Choice
QL9	Design of New Development
QL11	Environmental Impacts and Compatibility of Uses
QL12	Planning Obligations
HG1	Housing Provision
EN1	Landscape Character
HG9	Private Amenity Space
COM6	Provision of Recreational Open Space for New Residential Development
RA4	Housing Development within Defined Villages

### **3. Relevant Planning History**

1960 – 1989	Series of planning applications submitted for new dwellings - All Refused;
01/01731/OUT	To build one bungalow/cottage to replace former cottages - Refused 03.12.2001
02/00578/FUL	Use of disused cottages building for self-catering holiday accommodation - Refused 23.05.2002
03/01393/FUL	Reinstatement as a single dwellinghouse - Refused 19.02.2004
05/01304/OUT	New dwelling: Refused 15.09.2005 – Planning appeal dismissed.
04/06/09	Enforcement notice issued alleging construction of new building or rebuilding of former cottage – appeal dismissed period of compliance extended to 9/07/09.
10/00650/FUL	Construction and use of building as a dwellinghouse on the site of the former Mayflower Cottages – LPA declined to determine application in accordance with Section 43 of the Planning and Compulsory Purchase Act 2004 as a result of the proposed development having been subject to an appeal decision within the last two years and had been no material change in planning policy -14.06.2010.
10/00446/FUL	Erection of dwelling (retention of existing building) – Refused 25.10.2010.
May 2011 -	Applicant prosecuted in Crown Court and found guilty of non-compliance with the Enforcement Notice and fined.

### **4. Consultations**

4.1 ECC Highways – No objection subject to conditions requiring:

- Access remodelling;
- Pedestrian visibility splays;
- Vehicular visibility splays;

- No unbound materials;
- Vehicular turning facility, and
- Planting of new hedge 1m back from highway boundary and visibility splays.

## 5. Representations

5.1 One supporting representation has been received, raising the following summarised points:

- Proposal addresses previous objections,
- Family must be under stress,
- How can TDC justify the money being wasted both by TDC and the family involved?; and
- Who will re-house the family when they are made homeless?

5.2 Wix Parish Council – Not received at the time of writing.

5.3 Councillor Patten has requested that the application be referred to committee. He raises the following in support of the application:

- Whilst the proposal remains in conflict with the Development Plan, there are material planning considerations in this case which justify a departure to normal policy restraint.
- The proposal seeks the creation of a new dwelling house by relocating and retaining an existing building and is thus completely different from earlier applications which sought to regularise an existing unauthorised dwelling.
- By relocating the building away from the boundary with the neighbour, the proposal addresses an objection made in response to an earlier scheme relating to adverse impact on residential amenity.
- The Applicant would be happy to accept a personal occupancy condition whereby the residential use would enure only for his benefit. *DCLG Circular 11/95: Use of conditions in planning permission* confirms that the use of such conditions is appropriate in exceptional circumstances. This would enable the development to be permitted without undermining the strength of the Development Plan or setting a harmful precedent.
- A failure to secure planning permission in this case would inevitably render the Applicant and his family homeless. This is a material planning consideration.
- In view of the current movement towards greater engagement and involvement of local communities in the plan-making process (Localism Bill), it is important to note that there is considerable support for this proposal from the Parish Council and local community.
- Regarding the current enforcement position, a condition could be imposed that would set a sensible timeframe for the property to be moved to the new location, should this not be done in the timeframe, the Council can then continue with enforcement.

## 6. Assessment

The main planning considerations are:

- Context and background, including planning enforcement and appeal history;
- Proposal details;
- Policy considerations (including);
  - Sustainability issues;
  - Impact on character and visual amenities of the area;
  - Residential amenity;
  - Other issues; and,

- Human Rights issues and personal circumstances.

### **Context and background, including planning enforcement and appeal history**

- 6.1 The application site lies outside any defined settlement boundary and outside any other defined villages or rural settlement in the Local Plan. Whilst there are other dwellings in the vicinity that make up the area known as Wix Green, the application sites lies outside the boundary of the hamlet as defined by the 30mph limit.
- 6.2 The existing building was erected without the benefit of planning permission and this application seeks to retain the building as currently exists on site, albeit relocated centrally within the site. The site has a long history of applications for planning permission proposing either the repair/rebuild of the original cottages on site or the building of a new dwelling. In 2001 and 2005 outline applications were submitted for the erection of a bungalow to replace the original cottages. Both were refused and the latter was also dismissed on appeal.
- 6.3 The construction of the dwelling was carried out in 2008 in accordance with a Building Regulation approval. No planning permission had been granted and hence an enforcement notice was served. The notice was appealed on grounds that included i) planning permission ought to be granted, and ii) the period of 3 months for compliance with the notice was insufficient. In dismissing the appeal the Inspector concluded that the development conflicted with the long term established settlement and countryside policies of the Local Plan and government guidance. He also considered that it caused harm to the rural character of the area and would have a detrimental impact on the amenities of adjoining residents.
- 6.4 However, whilst he dismissed the appeal the Inspector extended the period for compliance to 6 months, i.e. September 2009. As no works to demolish the property in accordance with the enforcement notice had commenced by the due date authority was sought to prosecute for non-compliance. At its 15th September 2009 meeting the Committee resolved to delay any prosecution until the 1<sup>st</sup> March 2010. Proceedings against the applicant seeking compliance with the notice were undertaken culminating in the applicant being prosecuted and found guilty of the offence committed in court.

### **Proposal Details**

- 6.5 The application site measures approximately 0.09 hectares in size and is situated to the northern side of Harwich Road to the east of Wix Green a small hamlet, which is to the east of the main village of Wix. The site currently supports a single-storey detached dwelling measuring 16.8 metres x 3.8 metres with garden and parking areas. The existing unauthorised dwelling is situated immediately against the eastern boundary of the plot adjoining the curtilage of 'Tile Cottage' and is set back approximately 2.0 metres from the highway boundary and at right angles to it. The existing building is timber clad on a brick plinth with a pitched clay pantile roof. To the north, south and west of the site is open agricultural land. There is mature vegetation around the boundaries of the site. The site has a garden area of over 600 sqm and parking provision for at least two vehicles.
- 6.6 This application seeks permission for the relocation and retention of the existing building to a position almost central within the application site area, with the front elevation facing the highway. The application also details the provision of new close boarding fencing and native hedge species planting along the front and side (eastern) boundaries.
- 6.7 The applicant's agent describe the following procedures to be involved in the physical movement of the building:-

- The existing building comprises a timber frame super-structure which sits on a damp proof course (DPC) and dwarf wall/brick plinth.
- The dwarf wall permits the insertion of a series of steel beams underneath the timber frame.
- Once inserted, the beams would then be linked to a hydraulic cradle and the building stabilised.
- The hydraulic cradle can then be raised to lift the entire building from its foundations.
- Once raised, the building can be transported on rails to its new location and lowered onto a new foundation.

6.8 In this regard the local planning authority asked for further clarification on the following matters:

- Availability of detailed method statements and estimated costs;
- The method of moving part of the east elevation and the whole of the north elevation , which is constructed of brickwork;
- The method of access to the side of building sited along shared boundary next to a hedge belonging to the neighbouring property to insert the lifting beams, hydraulic cradle and rails; and
- Details of how the building is to be moved on rails given the constraints of the site which would appear to limit such movement.

6.9 In response to the above, a draft Method Statement has been received, detailing the following methods:

- To finalise all calculations and reserve an area for the delivery of scaffolding and steel,
- To obtain/make access through the dwarf wall and insert steel section/channel,
- To remove sufficient/gain access through, the external/internal finishes and insert the scaffolding,
- To erect/construct sufficient support for the wall plate using aluminium/steel tubing and ladder beams,
- To 'double clip' all load bearing tubing,
- To drill and fix with a pair of M20 nuts and bolts all steel section/channel at perpendicular junctions,
- To drill and fix sets of 9 ton load bearing skates at pre-determined intervals along each rail,
- To drill and fix sets of 12 ton steering dolly's at pre-determined positions,
- To supply sufficient anchorage/ballast to assist in the winching of the structure,
- To supply sufficient power to winch the structure; and
- The sub-base/base for the skates to manoeuvre over will be laid by others

6.10 The draft Method Statement explains that a 'Bird Cage' including ladder frame support will be employed to the building, resting on a steel frame. The Statement states that using this method it is possible to move the entire structure after it has been supported.

6.11 In terms of the Council's request to an estimate of cost, the applicant's agent clarifies that the Project Manager has offered his knowledge, expertise and labour to the applicant free of charge and that the utility contractors have pledged to loan the applicant any plant and equipment that may be required to implement the move at no cost.

### **Policy Considerations**

6.12 The relevant policy considerations are: QL1; QL2; QL9; QL11; HG1; HG3; COM6 HG9; RA4 and EN1 of the Tendring District Local Plan (2007) and government guidance in PPS1, PPS3 and PPS7.

- 6.13 The government has also recently published the National Planning Policy Framework: Consultation Draft, however, this document is at an early stage of consultation and likely to be subject of amendment and therefore can be accorded only limited weight. Accordingly, the development falls to be considered against the identified national and local adopted development plan policies.
- 6.14 Government guidance, which is still in force, is that new dwellings in rural areas should normally be within existing settlements to help create sustainable communities. PPS7 seeks to protect the countryside for its own sake and development should only be permitted outside of settlement boundaries where there is a clear need for a countryside location. Only where it is essential that someone lives close to their place of employment, such as agricultural workers, is new residential development normally considered acceptable. In this case the site is remote from main settlements and restricted in terms of access to public transport and other services. No case has been put forward by the applicant that there is a clear need for him to live in the countryside in terms of his employment. The dwelling is not for someone employed in agriculture or other rural occupation where proximity to place of work is necessary. The site is in an unsustainable location and without any special justification a new dwelling is considered to be unacceptable in principle. The proposal would, therefore, be contrary to the guidance in PPS1, PPS3 and PPS7 and policies QL1, QL2, HG1, HG3 and RA4 of the Local Plan.
- 6.15 The surroundings of the site comprise mainly open fields with sporadic residential development. Apart from Tile Cottage which borders the site to the east, the adjoining land is open and undeveloped. The introduction of a new building is considered to be obtrusive in such surroundings and together with the domestic paraphernalia accompanying the residential use of the site seriously detracts from the predominately open rural character of the area contrary to Local Plan policy QL 9 (i), (ii) and (iii) and the guidance in PPS7.
- 6.16 The application has been considered by the Highway Authority and subject to conditions to improve the site access and visibility splays raises no objection to the proposal.
- 6.17 For new residential development on sites of less than 1.5 hectares policy COM6 requires a financial contribution towards new or improved off-site facilities where existing public open space facilities in the area are inadequate to meet the projected needs of the future occupiers of the development. Wix is identified in the Council's open space audit as a Parish within a catchment area where there is a current deficit of equipped play space, accordingly a unilateral undertaking to provide the required financial contribution has been requested to comply with policy COM6. The Council is awaiting return of a signed unilateral undertaking and will provide an update at the meeting in this regard. Should this be received in time then the recommended reason for refusal would need to be modified accordingly.

### **Human Rights and Personal Circumstances**

- 6.18 In support of the retention of the dwelling the applicant's agent states that there are strong social and compassionate grounds and issues of natural justice which justify departure from planning policy in this instance. The agent identifies the following (summarised) matters in support of the application:
- Dwelling constructed over a period of 8 years under inspection TDC Building Control;
  - Building has been occupied by the applicant and family for over 3.5 years;
  - Proposals seek to address Council's other reasons for refusal by repositioning the building and establishment of hedging to replace existing close boarded fencing;
  - Applicant does not have the financial means to comply with the Enforcement Notice (TDC estimate of £76,000 to demolish building and restore the site);



- Applicant happy to accept a personal condition to ensure no harmful precedent is set, and
- Limited height and scale of building results in only minimal impact.

- 6.19 The agent considers that action prohibiting the occupation of the dwelling would inevitably render the applicant and his family homeless and that this would serve no beneficial planning purpose in the absence of an alternative use for the building.
- 6.20 It must be made clear that when the committee originally authorised prosecution for non-compliance with the enforcement notice, the issue of Human rights was fully considered. Article 8 of the Human Rights Convention refers to the right to respect of home. However, the Human Rights of individuals are capable of being outweighed by the Human Rights of others. Members were advised that it was in the wider public interest of the district as a whole as well as the immediate neighbours of Mayflower (Potter's) Cottage that the planning process was upheld. No new persuasive personal or other material circumstances have been raised since that decision that would point to a different conclusion, given the fundamental objection in principle. Therefore, your Officers remain firmly of the view that the material harm that would be caused by the retention of the building as set out in this report and importantly, the 2009 Inspector's decision, is clearly sufficient to outweigh any other material consideration.
- 6.21 The agent for the applicant and Councillor Patten have raised the issue of the personal circumstances of the applicant and the possibility of restricting occupation to named persons i.e. a personal permission. Whilst these are relevant considerations little weight can be given to them. Circular 11/95: 'The Use of Conditions in Planning Permissions' details that planning permission runs with the land and that it is seldom desirable to provide otherwise. The Circular goes on to state that there are occasions where it is proposed exceptionally to grant permission for the use of a building or land for some purpose which would not normally be allowed, where strong compassionate or personal grounds allow. In such cases permission should normally be made subject to a condition that it shall enure only for the benefit of a named person. However, the Circular is very clear in stating that this condition will scarcely ever be justified in the case of a permission for the erection of a permanent building. This application clearly involves a permanent building and there are no overriding personal circumstances which would justify the imposition of a personal condition in this instance. It should be noted that the Secretary of State was at liberty to impose such a condition should it have been merited or appropriate to do so during consideration of the 2009 appeal. The Secretary of State did not do so. Accordingly, officers advise that the suggested personal condition would not be in accordance with established planning guidance and therefore not appropriate in this instance.
- 6.22 Planning policy clearly seeks to achieve sustainable development and protect the countryside for its own sake. These are fundamental aims of the planning system and outweigh the personal circumstances of the applicant, brought about by his own actions.

## **Conclusions**

- 6.23 The planning appeal history of this site is a material consideration to which Members must give significant weight. The 2009 appeal decision is recent and considered the proposal for a new dwelling against the same policies of the Local Plan and the same government guidance in PPS1, PPS3 and PPS7. Furthermore, the principal of development was further opposed when determining the most recent application in August 2010. There have been no material changes to the policy context for the determination of this application. The proposed repositioning only serves to remove one identified element of concern. The fundamental planning objection to new development in the countryside remains.
- 6.24 Therefore, in terms of the policy considerations it is clear that there has been no material change in circumstances since the 2009 appeal decision that would affect the outcome of

this application. In these circumstances your Officers consider that the application should be similarly refused.

Background Papers

None.