

Development Management Report

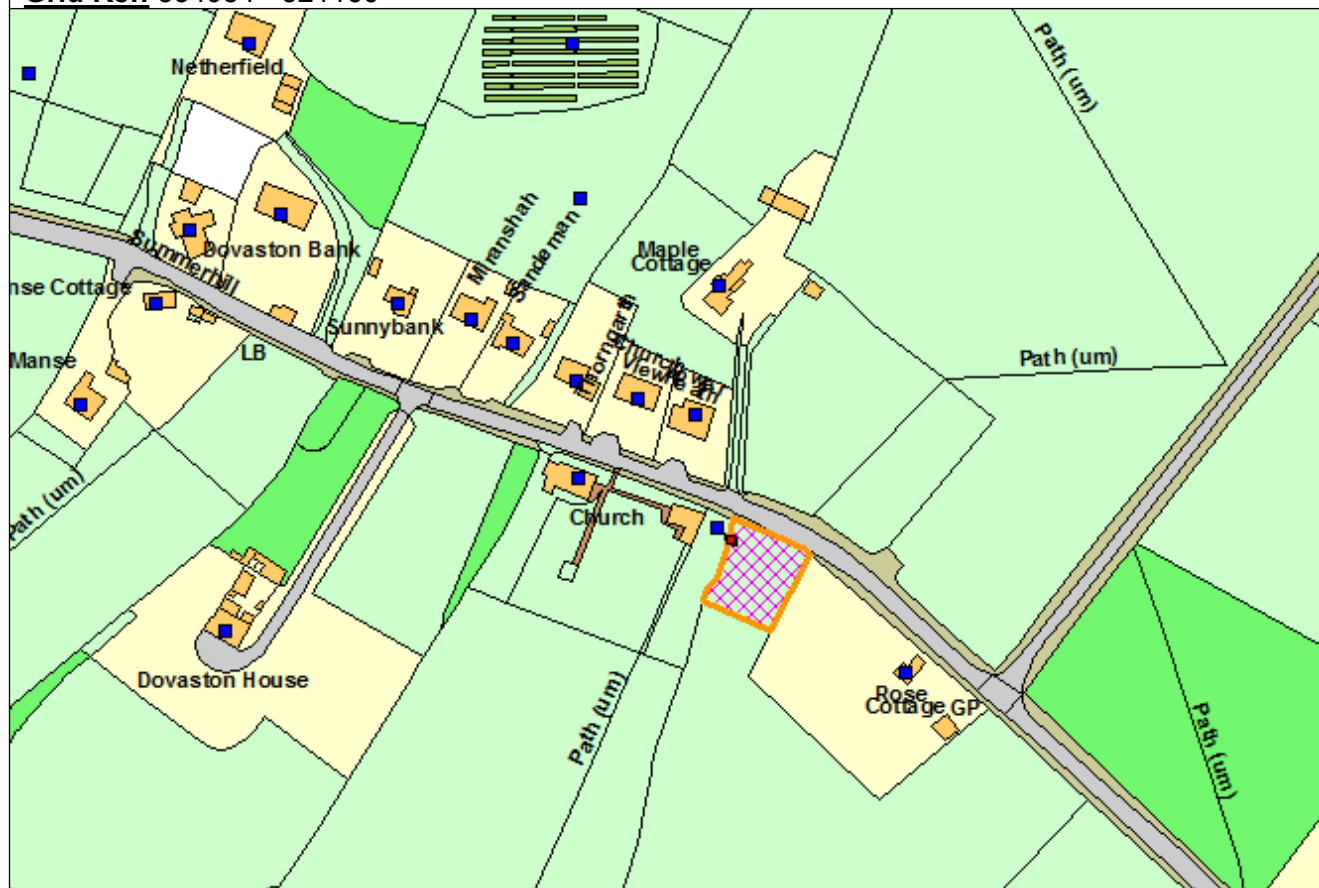
Responsible Officer: Tim Rogers

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Summary of Application

Application Number: 12/03866/FUL	Parish: Kinnerley
Proposal: Reposition previously approved replacement dwelling (previous ref 06/14437/FUL)	
Site Address: The Hollies Dovaston Kinnerley Oswestry Shropshire	
Applicant: Mr Edward Jones	
Case Officer: Tim Rogers	email: planningdmnw@shropshire.gov.uk

Grid Ref: 334954 - 321160



Recommendation:- APPROVE subject to the conditions sets out in Appendix 1 and the submission of a suitably worded Unilateral Undertaking from the applicant to not continue with the previous consent.

REPORT

1.0 THE PROPOSAL

1.1 This application seeks consent to amend the siting of a replacement dwelling which was initially approved under planning permission ref. no. 06/14437/FUL. That consent was implemented and therefore remains a valid planning permission which could be built out. Two subsequent applications for alternative schemes have been refused, the first for a different siting was refused on the grounds of the revised scheme being out of character with the area. The second was for a wholly different house design and size and was refused on the basis of the size and appearance being out of keeping.

1.2 Except for the siting of the proposed dwelling the application is the same as that already given consent in 2006. Therefore the key consideration is whether the siting now proposed is acceptable in planning terms, whether it is an improvement on the previously approved scheme or whether it is harmful to the character or the area or any neighbouring amenities.

2.0 SITE LOCATION & DESCRIPTION

2.1 This site lies to the east of the United Reformed Church and school building on the south side of Kinnerley Road in the settlement of Dovaston. There are existing houses diagonally opposite and on one side, with open fields directly opposite and to the rear. The site is enclosed with metal estate railings with the access gate set back from the access. Kinnerley Road is a country lane joining Knockin Heath, Dovaston and Kinnerley with houses in clusters along the road with agricultural fields in between.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

3.1 The Parish Council views are contrary to officers recommendation and therefore the scheme of delegation requires consideration by the Chair and Vice Chair of the planning committee.

The Chair of the committee has confirmed that the matter should be determined by committee given the planning history of the site.

4.0 REPRESENTATIONS

4.1 Consultee Comments

4.1.1 **Kinnerley Parish Council** – There are no changes to the proposal and therefore Kinnerley Parish Council continues to strongly object to this planning application and reiterates the material planning considerations in the previously submitted comments (5th October 2012)

Comment submitted date: Fri 05 Oct 2012

The proposal is to build a small cottage of the same size and design detail as that for which approval was granted in May 2006, but to reposition it away from the original site on which the original dwelling was placed. This site is not within the development boundary and is therefore defined as being in open countryside and

subject to Shropshire Council's Core Strategy Policy CS5.

Previous applications in 2006, ref OS/13775/OUT, to rebuild the cottage in the centre of the site were recommended for refusal by Planning Officers because "the applications appear to be designed to achieve both a building plot and almost inevitably a larger building". These applications were withdrawn following application for appeal and replaced with application 06/14437/FUL, to rebuild the cottage on its original footings. The Planning Officer recommended this for approval because "the new application is significantly different from the previous applications, as it does not seek any betterment by reposition the property into the centre of the plot where it would have greater potential for further extension and be more valuable".

Kinnerley Parish Council has no objection to the previously approved application that allows approval to replace the existing small cottage on the same site because this will replace a small home for which there is a strong demand for from local people.

Given the most recent planning application for a five bedroomed house, the moving of the plot position may lead to subsequent applications for a larger dwelling. We see no advantage or reason to move this property to the centre of the plot.

Oswestry Borough Council and the applicant Mr Jones considered the existing site suitable in 2006. Also other sandstone properties along the road occupy the same position - perpendicular to the road. Altering the position will change the landscape. In the report made to the Development Control Committee the planning officers state that replacing the cottage with a similar dwelling on the same site "will preserve the domestic and vernacular of the area and the built landscape will be returned to the position it was before".

This property should be rebuilt in the original position as agreed in the application 06/14437/FUL. Kinnerley Parish Council requests that the Planning Authority reviews all the previous applications, appeals and planning officer recommendations, relating to this site and if this application is to be considered by the Planning Committee, then they must be made aware of the history as well. Kinnerley Parish Council wants to emphasis to the planning authority that The Hollies was a modest cottage in sound condition until 2001. If the application is to be considered by the Planning Committee, please advise the Parish Council via the Parish Clerk, allowing sufficient time to seek permission to address the committee if needed.

- 4.1.2 **Highways** – The site has had a number of previous planning applications with regard to the replacement dwelling and access arrangements to serve the plot. Having researched my files and studied the supporting information the current proposal is seeking an amended position for the approved replacement dwelling. Raise no objection subject to utilising the agricultural access approved under reference 07/14963/FUL, which has not been included in the red line of the application site.

It would appear that the domestic use of this access was refused under application 07/15182/FUL. From the highway aspect the agricultural access as against the

access approved under 06/14437/FUL for the replacement dwelling is a better point of access to the plot and continues to hold the views as set out in the response of 1 October 2007 in respect of application 07/15182/FUL.

The access appears to have been laid out in accordance with the previous approval with the gate set back and the visibility splay provided across the site road frontage by the setting back of the boundary. The verge and shrubs that have subsequently been allowed to grow within the splay should however be trimmed and maintained to keep the line of sight.

In addition, should planning permission be forthcoming would also recommend that the proposed parking and turning provision be completed in accordance with the approved plan prior to the dwelling being occupied.

Recommendation – The highway authority continues to raise no objection to the granting of consent as outlined in the earlier consultation response.

4.1.3 **Drainage** – We have no comment from the drainage and flood risk perspective, regarding the reposition previously approved replacement dwelling as there are no increase to the footprint of the building.

4.1.4 **Fire Services** – Access for Emergency Fire Service Vehicles; it will be necessary to provide adequate access for emergency fire vehicles. There should be access for a pumping appliance to within 45 metres of all points within the dwellings. This issue will be dealt with at the Building Regulations stage of the development. However, the Fire Authority advise that early consideration is given to this matter.

4.2 **Public Comments**

4.2.1 The application has attracted 10 letters of objection from local residents; the main concerns raised are précised below:

- Should be in original position
- Originally one of a line of characteristic cottages
- Existing is part of the landscape character of the area
- Applicant allowed the cottage to fall down
- Kinnerley Parish Neighbourhood Plan is a material consideration
- New siting may result in pressure for extensions
- No garage indicated and will result in cars parked in the front garden
- Parking and amenity space should be to the rear
- This proposal is identical to the 2009 refused scheme
- 2006 consent was meant to be rebuilt of the existing materials but most of these have now been removed from the site
- Crucial that the history of all 12 previous applications (together with the views of Planning Officers involved) over the last 11 years are taken into account
- Detrimental to views from neighbouring properties
- Village needs small houses

5.0 **THE MAIN ISSUES**

- Principle of development
- Siting, scale and design

- Potential for future development

6.0 OFFICER APPRAISAL

6.1 Principle of development

- 6.1.1 The National Planning Policy Framework was introduced in March 2012. At the heart of this document is a presumption in favour of sustainable development, and it acknowledges that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise.
- 6.1.2 The NPPF constitutes guidance for local planning authorities as a material consideration to be given significant weight in determining applications. The NPPF specifically aims to 'boost significantly the supply of housing' therefore, the fact (and degree) that a proposed development helps to boost housing supply is a material consideration to which weight must be attached. These considerations have to be weighed alongside the provisions of the Development Plan and other material considerations.
- 6.1.3 The Council's Development Plan comprises The Core Strategy (adopted 2011) and the Site Allocations and Management of Development (SAMDev) (adopted December 2015) which have both been accepted by the Planning Inspectorate as being compliant with the NPPF.
- 6.1.4 Other supplementary planning documents that be afforded some weight in the decision-taking process are:
- Design Statement and Landscape Character Assessment for Kinnerley Parish;
 - Kinnerley Parish Neighbourhood Plan (KPNP);
 - Type and Affordability of Housing SPD.
- 6.1.5 This site is in open countryside by virtue of the fact that is not within the settlement boundary for Dovaston as defined by the SAMDev and as such Policies CS5 of the Core Strategy, MD2 and MD7a of the SAMDev are relevant. All of these policies allow for exceptions to be made to the general presumption against development in the countryside. Policy MD2 identifies one-for-one replacements as being an acceptable form of development in rural areas and Policy MD7a also makes provision for the replacement of existing dwellings in the countryside. MD7a advises that replacement dwellings should not be materially larger and must occupy the same footprint unless it can be demonstrated why this should not be the case.
- 6.1.6 The Housing SPD does detail the consideration required for replacement dwellings and seeks to control both the size and any future extensions of replacement dwellings in the countryside. It also aims to ensure that the visual impact of replacement dwellings is acceptable and that the development is sympathetic to the character and appearance of the original building. Replacement dwellings should ordinarily be sited in the same position as the original dwelling.
- 6.1.7 In relation to Policy H24 of the Oswestry Borough Local Plan that was relied upon when the previous application was refused (09/70206/FUL) this policy has now been superseded by the Core Strategy and the SAMDev and as such can be

afforded no weight in the consideration of this current proposal.

6.1.8 With regard to the KPNP and Design Statement, although material considerations, neither of these documents are part of the development plan and therefore should not be given greater weight than the Core Strategy or the SAMDev. Both documents predate the NPPF and the SAMDev. The Design Statement notes that the application site is proposed to be rebuilt and provides detailed advice on development in the area. The KPNP provides the Parish views on the future development and growth of the area. Neither document deal specifically with the issue of replacement dwellings and therefore the advice regarding new dwellings is not relevant to the current proposal.

6.1.9 Having identified the relevant policies and supplementary documents (as set out above) there is a general presumption in favour of allowing replacement dwellings. The site has a long-standing residential use and it is appropriate for a dwelling to be rebuilt in some form on this parcel of land. Therefore the development is acceptable in principle. It is the detail that is causing the main areas of concern within the local community; this shall be explored in the next section of the report.

6.2 Siting, scale and design

6.2.1 In terms of scale and design the house-type now being proposed is identical to that approved under reference no. OS/06/14437/FUL; this being the case it would be difficult to defend a refusal on the grounds of either inappropriate scale or design; both these elements of this submission have already been considered and approved within OS/06/14437/FUL.

6.2.2 Furthermore, given that the proposed dwelling is the same size as that which originally occupied the site, concerns raised by third parties regarding that it would be contrary to the aims and ambitions of the Neighbourhood plan which seeks to provide smaller units cannot be afforded any weight. The issue of potential for future development is considered in the following section of this report.

6.2.3 This now leaves only siting as the remaining issue and whether or not the repositioning of the proposed dwelling to the centre of the site would be so detrimental to the character of the locality as to warrant a refusal.

6.2.4 The site is afforded no special protection, that is to say is it not within a designated conservation area, nor is it within the Shropshire Hills Area of Outstanding Natural Beauty. Nonetheless, the policy frameworks requires all new development to have regard to local distinctiveness. The rise in the acknowledged importance of local distinctiveness has come about as a direct reaction to the homogenising effect of the large-scale house builders who have a tendency to build 'anywhere-housing' that are the same format the length and breadth of the country; the plans are off-the-peg. Consequently, towns, villages and rural areas are perceived as increasingly similar in appearance. By focusing on what is different from one area to another and reinforcing those differences the local character and the local distinctiveness can be retained.

6.2.5 Some of the main determining factors that establish a sense of local distinctiveness are identified in the Kinnerley Parish's Design Statement and Landscape Character Assessment. In terms of the area identified as 2.2.2 (which this site adjoins) the

statement referring to house-styles reads:

House Styles – The dominant buildings are the red brick, 19th century United Reformed Church (URC), its sandstone schoolroom (the original Church), and the associated, walled churchyard. Since the 1950s, six new dwellings have been constructed opposite the URC; two bungalows and four detached houses, three of which have been built close to the road, and to a modern town design.

Two detached, red brick houses, the Manse and a Victorian house, are sited well back from the road. Also set back from the road are the two former smallholdings, one of which has been rebuilt as a large, chalet type house, Dovaston Bank Farm, and Maple Cottage, largely unchanged.

6.2.6 In terms of the Built Environment within the Principal Settled Farmlands (Dovaston) (Parcel No. 4) the text reads:

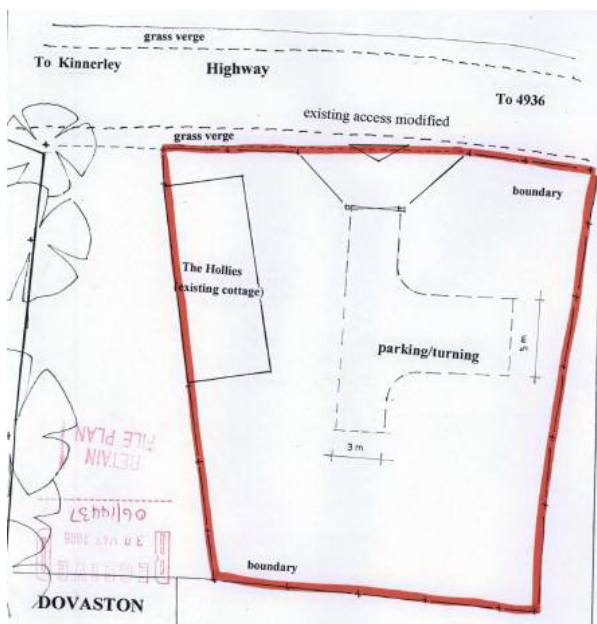
Individual smallholdings and crofts at intervals along the roads. These small sandstone cottages remain a feature of this landscape.

6.2.7 MD7a of the SAMDev requires replacement dwellings to occupy the same footprint as the existing dwelling, unless it can be demonstrated why this should not be the case.

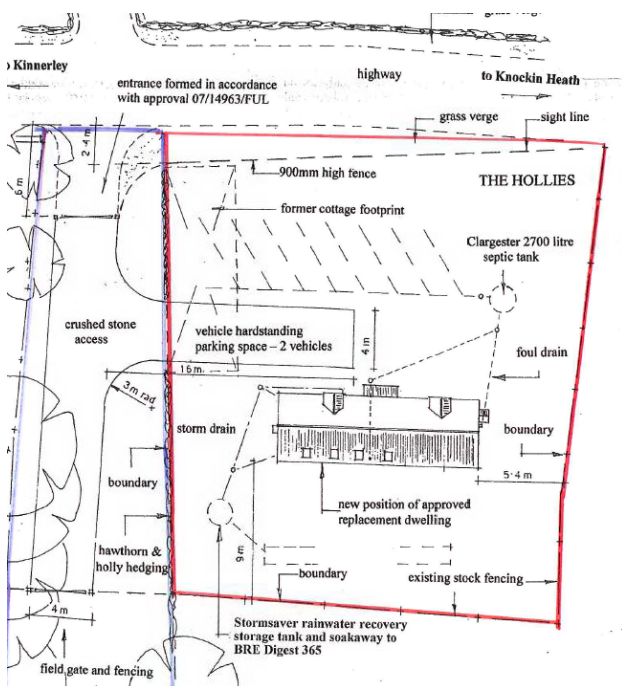
6.2.8 By way of justifying the resiting the applicant has offered the following information:

- The resiting allows for the private garden area to be at the rear of the dwelling and screened by the house from public roadside view. Rear gardens are the space where private family activities predominate and areas which generally have a plethora of domestic paraphernalia (such as children's play equipment, clothes lines, BBQ etc...), with this arrangement this domestic paraphernalia will be out of sight.
- In addition the resiting allows safety separation of the short drive and car parking area from the Private garden area by the main dwelling rather than requiring fencing.
- The character of dwellings in Dovaston varies but most are detached and set back from the road with their principal elevation facing towards the road; dwellings gable-onto the roadside are not the norm.

6.2.9 The key considerations are the parking and amenity space and the impact of providing private amenity on the approved scheme. This plan shows the replacement dwelling approved in 2006. As can be seen the majority of the curtilage will be taken up by the driveway and turning area. To provide a private or secure amenity space would entail a fence being erected at the back of the driveway which itself would be visible from the highway.



6.2.10 The current proposed layout provides parking and turning in front of the dwelling and private, secure, amenity space to the rear of the dwelling with minimal fencing required. The agent’s comment regarding the varied character of the village is also noted by officers. The village is made up of properties both gable end onto the road and also set back from the road. Furthermore, setting the proposed dwelling back from the road will also retain the views of the Church and school building which have been gained since the original cottage was removed.



6.2.11 As such officers are of the opinion that there is merit in the proposed resiting the dwelling and that the proposed resiting would not be so significantly harmful to the character of the area to warrant refusal of the application.

6.3 Potential for future development

6.3.1 Having reviewed the planning history it is quite understandable that the local

community would have concerns regarding the development of this site. The details of the replacement dwelling as indicated in application ref. no. 11/04279/FUL are as unacceptable now as they were in 2011. Clearly the style of house that was proposed at that time is out of character with the local vernacular, and far exceeds the size requirement as set out in the adopted policies.

- 6.3.2 The current proposal would not in any way negatively prejudice the Council's position in relation to a development of the nature and scale proposed in 2011. The Council's policies are sufficiently robust to sustain a refusal for the much larger proposal along the lines previously given.
- 6.3.3 In terms of future extensions it is the Council's policy to remove permitted development rights from replacement dwellings. This will enable the Local Planning Authority to control any future additions to the dwelling. Small scale extensions which would have been suitable on the original dwelling may be acceptable but would need to be applied for through a planning application and consulted on.
- 6.3.4 Finally, having commenced the original consent, ref. no. OS/06/14437/FUL, if the Local Planning Authority were to now grant this consent the site would benefit from two separate consents that could potentially result in two dwellings being built; this is clearly undesirable in planning terms. To overcome this fundamental objection the applicant has offered a Unilateral Undertaking (UU) to voluntarily rescind OS/06/14437/FUL. Such a legal document would protect the Council's position and ensure the development of the site with a single dwelling only.

7.0 CONCLUSION

- 7.1 The application has attracted a level of local objection, and having reviewed the 2011 applicant this is understandable. However, the decision-taking process can only concern itself with the facts of the application that are currently before it for consideration.
- 7.2 This scheme seeks to rebuild the dwelling to design of which has already been approved in relation to reference no. OS/06/14437/FUL, but repositioned on the site.
- 7.3 The repositioning is not harmful in planning terms. It facilitates an improved relationship between the house and the road, being set further within the site. Furthermore, it creates a private rear garden area that can accommodate the usual domestic paraphernalia without impacting on the street scene.
- 7.4 Permitted development rights are to be removed to ensure the Local Planning Authority has control over any future extensions; and the UU will effectively rescind OS/06/14437/FUL and ensure the provision of only one dwelling on the site.
- 7.5 In conclusion, the proposed development simply resites an identical house within the site with no demonstrable harm to the appearance or character of the area. The scheme is therefore recommended for approval subject to the conditions below and also the submission of a suitably worded Unilateral Undertaking from the applicant.

8.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL

8.1 Risk Management

There are two principal risks associated with this recommendation as follows:

- As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.
- The decision may be challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

8.2 Human Rights

Article 8 give the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

8.3 Equalities

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in Planning Committee members' minds under section 70(2) of the Town and Country Planning Act 1970.

9.0 FINANCIAL IMPLICATIONS

There are likely financial implications of the decision and/or imposition of conditions if challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependant on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – in so far as they are material to the application. The weight given to this issue is a matter for the decision maker.

10.0 BACKGROUND

Relevant Planning Policies

Central Government Guidance:

NPPF
NPPG

Core Strategy Policies:

Policy CS5: Countryside and Green Belt

Policy CS6: Sustainable Design and Development Principles

List Of Site Allocations & Management Of Development (SAMDev) Plan Policies

MD2: Sustainable Design

MD7: Managing Development in the Countryside

Relevant planning history:

- 11/04279/FUL Erection of replacement dwelling (revised scheme)
- REFUSED 6th March 2012
- 09/70206/FUL Proposed repositioning of approved replacement dwelling
- REFUSED 15th May 2009
- OS/07/15182/FUL Utilisation of existing agricultural access (parcel 8700) to form a domestic vehicular and pedestrian access to The Hollies
- REFUSED 12th December 2007
- Appealed LPA decision OS/07/15182/FUL - ALLOWED 5th August 2008
- OS/06/14437/FUL Proposed replacement dwelling and alterations to access GRANTED 25th July 2006
- OS/04/13288/FUL Erection of a boarding cattery GRANT 3rd August 2004

11.0 ADDITIONAL INFORMATION

- 11.1 List of Background Papers: 12/03866/FUL Reposition previously approved replacement dwelling (previous ref 06/14437/FUL)
- 11.2 Cabinet Member – Cllr M. Price
- 11.3 Local Member – Cllr Arthur Walpole
- 11.4 Appendices
APPENDIX 1 - Conditions

APPENDIX 1

Conditions

STANDARD CONDITION(S)

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

Reason: To comply with Section 91(1) of the Town and Country Planning Act, 1990 (As amended).

2. The development shall be carried out strictly in accordance with the approved plans and drawings

Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and details.

3. The access, parking and turning areas shall be satisfactorily completed and laid out in accordance with the approved block plan drawing prior to the dwelling being occupied. The approved parking and turning areas shall thereafter be maintained at all times for that purpose.

Reason: To ensure the formation and construction of a satisfactory access and parking facilities in the interests of highway safety.

CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

4. Prior to the above ground works commencing samples and/or details of the roofing materials and the materials to be used in the construction of the external walls shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in complete accordance with the approved details.

Reason: To ensure that the external appearance of the development is satisfactory.

5. No development shall take place until a scheme of foul drainage, and surface water drainage has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented before the development is occupied/brought into use (which ever is the sooner).

Reason: The condition is a pre-commencement condition to ensure satisfactory drainage of the site and to avoid flooding.

CONDITION(S) THAT ARE RELEVANT FOR THE LIFETIME OF THE DEVELOPMENT

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development relating to schedule 2 part 1 class A, B, C and D; shall be erected, constructed or carried out.

Reason: To maintain the scale, appearance and character of the development and to safeguard residential and / or visual amenities.