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## Appeal Decision

Site visit made on 6 December 2016

**by Jonathan Tudor BA (Hons), Solicitor (non-practising)**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 31 January 2017**

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**Appeal Ref: APP/L3245/W/16/3158316**

**1 Hillbrook Drive, Chester Road, Grindley Brook, Whitchurch SY13 4QJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Paul Roberts (DA Roberts Ltd) against the decision of Shropshire Council.
  - The application Ref 16/02162/FUL, dated 17 May 2016, was refused by notice dated 30 June 2016.
  - The development proposed is described as 'change of use of underused commercial land to form extended residential curtilage and erection of standalone ancillary pool building.'
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### Decision

1. The appeal is allowed and planning permission is granted for change of use of commercial land to form extended residential curtilage and erection of standalone ancillary pool building at 1 Hillbrook Drive, Chester Road, Grindley Brook, Whitchurch SY13 4QJ in accordance with the terms of application, Ref 16/02162/FUL, dated 17 May 2016, subject to the attached schedule of conditions.

### Application for costs

2. An application for costs was made by Mr Paul Roberts (DA Roberts Ltd) against Shropshire Council. This application is the subject of a separate Decision.

### Procedural Matter

3. I have used a slightly different description in the decision from the banner heading omitting the word 'underused' which is not an act of development and is superfluous.

### Main Issues

4. The main issues are:
  - whether the proposal would result in a restricted occupancy dwelling and outbuildings of a size above that required for the operation of the related garage business, thereby affecting future affordability; and,
  - the effect of the proposal on the living conditions of occupiers of nearby properties, with particular regard to noise.

## Reasons

### *Size of restricted occupancy dwelling and outbuildings*

5. The appeal site is an area of land adjacent to a two-storey restricted occupancy dwelling at 1 Hillbrook Drive. On higher ground to the south east lies a residential property, The Bungalow, with the A41 road skirting the western boundary of the site. The site is within Grindley Brook, a small rural settlement surrounded by open countryside
6. The Council advises that the original dwelling was granted planning permission on 24 April 1995, Ref NS/94/00891/FUL. As the site was considered to be in the countryside, the Council advises that condition 10 of that permission indicated that the development would be unacceptable unless justified by the needs of the attached business premises. Therefore, the occupation of the dwelling was limited to a person solely employed in the adjacent garage business.
7. The proposal is to construct a large separate outbuilding comprising a swimming pool on an area of commercial land to the south east of the dwelling. It would be used privately by the occupants of the dwelling.
8. It is submitted by the Council that the proposal would be contrary to Policy CS11 of the Shropshire Local Development Framework: Adopted Core Strategy (CS)<sup>1</sup> and the Type and Affordability of Housing Supplementary Planning Document (SPD). That is on the basis that it would result in a restricted occupancy dwelling that would be *'excessively large in scale and floor area in relation to the requirements of the operation of the garage business'*.
9. The Council holds that such occupational dwellings are, according to the SPD which refers to Policy CS5 of the CS, treated as part of the pool of affordable housing and should remain affordable. Consequently, it is suggested by the Council that the additional building would increase the size of the overall dwelling to a point where it would no longer be affordable and thus be in conflict with Policy CS11.
10. However, the appeal proposal is for an outbuilding rather than a new dwelling. Policy CS5 aims to strictly control development in the countryside but also explains circumstances where proposals will be permitted. That includes development on sites which maintain and enhance countryside vitality and character and where proposals improve the sustainability of rural communities by bringing local economic and community benefits. In that context, CS5 gives examples of such development which includes *'dwellings to house agricultural, forestry or other essential countryside workers and other affordable housing/accommodation to meet a local need in accordance with national planning policies and Policies CS11 and CS12.'*
11. Policy CS11, entitled 'Type and Affordability of Housing', advises that to meet diverse housing needs *'an integrated and balanced approach will be taken with regard to existing and new housing, including type, size tenure and affordability.'* It goes on to explain how that will be achieved which includes: *'Permitting exception schemes for local needs affordable housing on suitable sites in and adjoining Shrewsbury, Market Towns and Other Key centres, Community Hubs and Clusters and recognisable named settlements, subject to*

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<sup>1</sup> March 2011

*suitable scale, design tenure and prioritisation for local people and arrangements to ensure affordability in perpetuity.'*

12. Exception sites are explained more fully in Section 5 of the SPD as being in locations where planning permission would not normally be given. Applications relating to 'Single plot' exception sites are *'usually individuals who wish to utilise the Council's 'build your own affordable home' single plot scheme (i.e. owner occupied affordable housing).'*' Section 106 agreements are envisaged as the appropriate method detailing requirements and restrictions.
13. Section 3 of the SPD deals with farm workers and other occupational dwellings in rural areas and alludes to the exceptions for occupational dwellings and other affordable housing referred to in Policy CS5. It states that the new occupational dwellings will be secured from the start by a section 106 agreement for affordable housing to make them more flexible than in the past. It is clear therefore, that the arrangements to ensure affordability in perpetuity would normally, in the case of single plots, be made as part of the planning permission process and consist of a s106 agreement.
14. Therefore, it is clear that the policy and guidance framework is primarily directed at situations where a new occupational dwelling is being proposed. That is clearly not the case here, where the original occupational dwelling already exists and was permitted under a different policy framework, the former North Shropshire Local Plan, a considerable time ago. There is no s.106 agreement to regulate affordability and the Council have confirmed that, contrary to current guidance in 3.7 of the SPD, permitted development rights were not removed under the relevant planning permission.
15. All planning decisions have to be judged against the current development plan. However, in this somewhat unusual scenario, the proposal is for an outbuilding and change of use of land that would become associated with a pre-existing occupational dwelling. It is inappropriate and tenuous to attempt to treat that proposal almost as if it were an application for a new occupational dwelling and outbuilding. Therefore, I do not consider that the proposal itself is the type of exception scheme for local needs affordable housing envisaged by Policy CS11, upon which the Council's future affordability argument is based.
16. It is, therefore, on a mistaken premise that the Council's seeks to apply the maximum gross internal floor space of 100m<sup>2</sup> for rural occupational dwellings, quoted in 3.7 of the SPD. The Council advises that the existing occupational dwelling, permitted before the SPD was in place, is approximately 160m<sup>2</sup> and that the swimming pool would be about 130m<sup>2</sup>. In any event, 3.7 of the SPD also refers to the 100m<sup>2</sup> figure as a *'starting point'* and something that *'rural occupational dwellings should aim for'*.
17. Furthermore, exceptions are contemplated where, for example, the dwelling would be the principal dwelling for a rural enterprise. In those circumstances an applicant can make the case for a larger amount of floor space. The SPD does not specifically state that the size of a separate outbuilding of this type should be aggregated with the gross internal floor space of the dwelling, yet that is the approach that the Council have taken.
18. Specific reference to outbuildings or other buildings associated with the main occupational dwelling appears in 3.7 of the SPD, where it states that *'there may be a need for a farm office or wet room as part of the development, and*

*this will be taken into account.'* Later in the same section, following a discussion of the possibility of larger principal dwellings, it states: *'Similarly any outbuildings will need to be justified'*.

19. The Council suggest that the proposal is not justified to support the business and is, therefore, contrary to the SPD and Policy CS11 but CS11 makes no specific mention of outbuildings in this context. The SPD speaks of justification mainly in relation to the occupational dwelling. It states that applicants must demonstrate that a dwelling at the business is essential by showing a functional need for the occupier to be present at the business for the majority of the time. The original dwelling was justified on a similar basis.
20. The appellant advises states that the dwelling is occupied by a principal director of the adjoining garage business who needs to be on hand 24 hours a day, 7 days a week. Due to the pressures and demands of the business, the appellant states that leisure time and time to spend with his young family is very limited. Therefore, a leisure facility on the same site would enable the appellant to achieve a better work-life balance and assist the contribution that he can make to a large busy rural enterprise. I also note the benefits that the proposal would provide to the appellant's wider family including the appellant's father, a managing director of the business.
21. Though particular personal circumstances are not generally the focus of planning policy, it is reasonable, in these circumstances, to make a connection between a facility that will contribute to the health and well-being of the members of the family business to enable them to better meet the demands of that business. That enterprise does contribute to the aim of *'enhancing the broad social and economic wellbeing of rural communities'* referred to in Policy CS6 of the CS.
22. Whilst the Council asserts that the proposal is not justified to support the business, there is no explanation or assessment of evidence detailing how that conclusion was arrived at. Therefore, on balance, I find that I am more persuaded by the justification given by the appellant.
23. The proposal would also make use of an area of commercial land that is considered under used, due to its position separated from the garage by the dwelling. Furthermore, it is accepted by the Council that the proposal would not adversely affect the character and appearance of the area.
24. The appellant refers to pre-application advice from the Council, PREAPP/16/00047, which also considers permitted development rights for a similar-sized building to the north west of the existing dwelling. The Council's opinion is that the alternative would be considered as permitted development, albeit that formal legal confirmation could only be given if a Certificate of Lawfulness was submitted for consideration. The Council also confirms that the original planning permission for the dwelling did not remove any permitted development rights.
25. It seems to me that, even though that building would be located on the existing access to 1 Hillbrook Drive, it does represent a realistic fallback position, as an alternative access would be possible. I also agree with the appellant that a building in that position would appear more prominent, with a potentially adverse effect on the character and the appearance of the area. In contrast, the proposed development is on land well below road level and would

be less conspicuous. The fallback is not referred to in the in the Council Officer's report. As any contemplated harm caused by the fallback would be equal to or potentially greater than any harm caused by the proposal, I give the fallback significant weight.

26. Taking the above factors into account, I do not consider that the proposal would cause public harm. The particular circumstances in which it would have an adverse effect on the future affordability of an occupational dwelling with a clear tie to a family business are not fully explained by the Council. Overall therefore, I conclude that the proposal would not result in a restricted occupancy dwelling and outbuildings that would be of a size above that required for the operation of the related garage business.
27. Consequently, there would be no clear conflict with the objectives of Policy CS11 of the CS or the SPD, which amongst other things seek to meet the diverse housing needs of Shropshire residents and ensure that occupational dwellings and outbuildings are commensurate and justified for the needs of the associated business.

### *Living Conditions*

28. The second element of the Council's reason for refusal is that insufficient details about the location of plant equipment, extraction fans and any noise mitigation measures have been provided. Policy CS6 of the CS states that development should safeguard residential and local amenity. That would include the potential adverse effects of noise on the living conditions of occupants of neighbouring or nearby properties.
29. Some further information on that aspect has been provided in the appellant's Appeal Statement. It states that the plant room would be within the building itself and located closer to 1 Hillbrook Drive, which the swimming pool would serve, than to adjoining properties. The only equipment with outdoor extraction would be the air handling system.
30. Given its proximity to the restricted occupancy dwelling, I accept that it would be in the interests of the appellant to ensure that appropriate measures are in place to minimise noise to protect the living conditions of his family. Thereby, potential effects on neighbours further away should also be addressed. Overall, I conclude that potential adverse effects with regard to noise on the living conditions of occupiers of neighbouring properties could be satisfactorily dealt with by condition.

### **Conditions**

31. I have considered the conditions suggested by the Council, making minor modifications if necessary. A condition setting a time limit for commencement of the development is required by statute. It is appropriate that there is a condition requiring the development to be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning. A materials condition is included to ensure that the external appearance of the development is satisfactory.
32. A drainage condition is necessary to ensure satisfactory drainage on the site and to avoid flooding. It is appropriate to include a contaminated land condition to ensure that risks from land contamination are minimised.

33. A condition suggested by the appellant regarding the type, specification and location of any plant or extraction equipment is included, with minor alteration, to ensure mitigation of any noise associated with such equipment.

### **Conclusion**

34. Therefore, I conclude that, for the reasons given above and having regard to all other matters raised, the appeal should be allowed.

*Jonathan Tudor*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development shall be carried out strictly in accordance with the approved plans and drawings: Location Plan W12/2202/00 Rev B; Existing and Proposed Block Plan W/15/2352/01 Rev B; Proposed Elevations W/14/2352/03 Rev C; Proposed Block Plan and Front Elevation W/15/2352/05 Rev B.
- 3) No development shall take place until details of all external materials, including hard surfacing, have been first submitted to and approved by the local planning authority. The development shall be carried out in accordance with the approval details.
- 4) 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 (whichever is the sooner).
- 5) Prior to the installation of any plant or extraction equipment, full details of the equipment, its specification and position in the building must be submitted to and approved in writing by the local planning authority. Equipment meeting the approved details shall be retained thereafter.
- 6) (a) No development, with the exception of demolition works where this is for the reason of making areas of the site available for site investigation, shall take place until a Site Investigation Report has been undertaken to assess the nature and extent of any contamination on the site. The Site Investigation Report shall be undertaken by a competent person and conducted in accordance with DEFRA and the Environment Agency's Model Procedures for the Management of Land Contamination, CLR 11. The Report is to be submitted to and approved in writing by the local planning authority.  
  
(b) In the event of the Site Investigation Report finding the site to be contaminated a further report detailing a Remediation Strategy shall be submitted to and approved in writing by the local planning authority. The Remediation Strategy must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

(c) The works detailed as being necessary to make safe the contamination shall be carried out in accordance with the approved Remediation Strategy.

(d) In the event that further contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of (a) above, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of (b) above, which is subject to approval in writing by the local planning authority.

(e) Following completion of measures identified in the approved remediation scheme a Verification Report shall be submitted to and approved in writing by the local planning authority that demonstrates the contamination identified has been made safe, and that the land no longer qualifies as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land.