



Committee and date
South Planning Committee
24 October 2017

Development Management Report

Responsible Officer: Tim Rogers
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Summary of Application

Application Number: 17/00298/FUL	Parish: Eardington
Proposal: Reconfiguration and upgrade of existing cottages including erection of single storey and two storey extensions to form 3 larger dwellings	
Site Address: 9, 10 And 11 Lower Forge Cottages Eardington Bridgnorth Shropshire WV16 5LQ	
Applicant: Mr And Mrs Turner	
Case Officer: Lynn Parker	email: planningdmse@shropshire.gov.uk

Grid Ref: 373243 - 289493



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Contact: Tim Rogers (01743) 258773

Recommendation:- Grant Permission subject to the conditions set out in Appendix 1.

REPORT

1.0 THE PROPOSAL

- 1.1 This application is for conversion, upgrade of and extension to the property known as no. 9, 10, and 11 Lower Forge Cottages, Eardington to form 3 no. larger dwellings. Lower Forge Cottages were originally constructed in the 18th Century to house iron workers, however are currently derelict and uninhabited following the demise of the previous owner who used them as a single property. The building requires updating to modern standards in order to make it habitable again as the current dwellings are too small for a family to live comfortably. The intention is to achieve this by:
- o Retaining as much of the original building as possible.
 - o Clearly defining extension to it by using a different materials palette.
 - o Extending to the elevations where there is available space and away from the road.
 - o Providing large areas of glazing through which the original fabric is viewable.
 - o New pathways created from the parking provision to the cottages.
- 1.2 The plans as originally submitted proposed a single storey, mono pitch roof extension across the south east facing front of the building spanning the full width of the cottages. This would measure approximately 16.5m wide x 4m in depth x 3m high, 2.25m to eaves. A front entrance door and full height large window would be provided for each of the 3 cottages.
- 1.3 Additionally, a two storey extension was proposed to the north east facing side of the dwelling in the form of a dual pitched roof wing with a south east facing gable. This would measure approximately 4.5m wide x 6.75m in depth x 6.25m to ridge height, 4.25m to eaves matching the height of the existing roof. Similar large scale windows to those indicated on the single storey extension are proposed on the south facing corner at both ground and first floor levels of the two storey extension. (Amendments subsequently made to the proposed extensions are described at paragraphs 1.7 and 1.8 below).
- 1.4 The proposed refurbishment and extension would provide the following internal accommodation:
- Nos 9 and 10
Ground Floor – kitchen/dining/living, bedroom 1
First Floor – bedroom 2, bathroom
- No. 11
Ground Floor – kitchen/dining/living, utility, WC, bedroom 3
First Floor – master bedroom with ensuite, bedroom 2, bathroom, storage.

1.5 Materials are proposed as timber cladding, render and brick for the walls, tiles to match the existing roof, timber framed double glazed and aluminium framed double glazed windows and timber doors. Vehicular access would be gained from the lane to the east and parking provision created for 2 no. vehicles per dwelling. Foul sewage is proposed to be disposed of via a septic tank and surface water to soakaway. No trees or hedges would be affected by the development.

1.6 In addition to the Design and Access Statement, the following documents have been submitted in support of the application:

Structural Condition Survey Report by Geomitre Consultants Ltd dated 24th March 2016.

This document contains observed defects and recommended works.

Ecological Appraisal by Salopian Consultancy dated 21st August 2017

Identifies that all three cottages support features that could be used by both crevice and void dwelling species of bat. During inspection, clusters of droppings were found on the first storey and at the bottom of the stair well in the middle cottage. A series of Phase 2 Bat Surveys were undertaken between May and July 2017 to determine the presence/absence of the species. A single Lesser Horseshoe Bat was observed light testing within the stair well of the first storey of no. 10. Two Soprano Pipistrelle roosts were also identified below the guttering of no. 10 and within a crevice associated with damaged brick work of no. 11. Therefore an EPS licence from Natural England would be required for any works to the building.

Evidence of nesting birds were noted in all buildings. It is recommended that works are undertaken between September and February outside of the bird nesting season.

No water bodies were identified within a 250m radius nor were any other habitats considered suitable to support protected species identified on or immediately off site.

No evidence of other protected species were identified on site. The proposal has the opportunity to provide enhancements for protected species by way of the inclusion of bat and bird boxes within the built form and a standalone structure to replace secure long term opportunities for Lesser Horseshoe Bats on site.

1.7 During the course of the application in response to officers' concerns expressed during a site meeting, subsequent meetings took place in order to discuss the design and scale of the proposed works. Amended plans and further justification documents have been submitted as a result. The Lower Forge Viability Calculations received on 12 April 2017 compares the cost of renovating with the cost of rebuilding, and a Lettings Advice Letter from McCartneys LLP dated 7th April 2017 confirms that there is a demand for two and three bedroom rural properties to rent.

1.8 The amended plans retain the internal layout for nos. 9 and 10, but re-configure that of no. 11 gaining a pantry at ground floor level and omitting the master bedroom ensuite. The single storey extension is now proposed with a flat roof containing roof lights and is reduced in depth to approximately 3.75m and height to

2.5m. Alterations to the proposed two storey extension change it to a part single/part two storey addition. The single storey element is proposed to the north east side with a single pitch roof and to accommodate the pantry and part of the kitchen. It would measure 2.15m wide x 6.5m max depth x 2.75m to ridge height, 2.25m to eaves. The two storey element is proposed to the south east facing rear and is reduced in depth to approximately 3.75m (matching that of the single storey extension across the rear). Its height and width remain as submitted, however the large scale windows are inset from the corner.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 The site falls within open countryside in the settlement of Lower Forge approximately 3km to the south east of the Market Town of Bridgnorth. It is accessed via an unclassified road from the B4555 to the west. Lower Forge is positioned on the west side of the River Severn set into the bank which slopes down to it. The settlement comprises mainly traditional properties of varying sizes including terraced cottages and large detached dwellings which are set either side of the road. Nos 9, 10 and 11 Lower Forge Cottages are on the north east side of a terrace which also contains nos. 5 – 8. The front elevations of the terrace face south east towards the river approximately 45m away, as the road is set closely to the north west side, in fact the corner of no. 11 at the end of the terrace is angled such to accommodate the road which it abuts. The space to the rear consists of a retaining wall preventing the steep bank up to the road from encroaching on the cottages. The amenity space for the plots is therefore in the majority located between the front elevations and a vehicular track serving the terrace which is positioned along the bank of the river. The associated land for no. 11 is significantly larger as it is the end property with a span of approximately 20m to the adjacent dwelling at Coachmans Cottage owned by the applicants.
- 2.2 The cottages are constructed in mixed brick with a tiled roof and 3 no. chimneys of varying ages. Whilst the external structure appears solid the internal space has been gutted, some of the windows are missing and it is clear that the living accommodation was fairly basic. No. 11 is essentially one room up, one down internally and is not connected through to the other properties at ground floor level. It has basically been used as storage space. The other two properties have a linear format where rooms are accessed through others and again appear to have had very limited internal space. Whilst in a poor state, the cottages can be said to have a traditional vernacular design and construction and relate to the historic use of the area.
- 2.3 No.9 is attached on its south west side to no. 8, a white painted cottage which has benefitted from a front porch and a two storey rear extension where it has more space between the north west facing rear elevation and the road than nos. 9, 10 and 11. No. 7 beyond also has a two storey rear extension and there are other front porches further along. The original completely linear format of the terrace has been permanently altered by these previous extensions to nos. 5 – 8. The front side boundary line between nos. 9 and 8 is defined by hedging, otherwise there the land on this side of the terrace is fairly open. There is a further terrace of cottages approximately 11m to the west containing nos. 1 – 4, and a neighbouring dwelling across the road approximately 32m to the north. All these properties are set at a higher level as they are further up the bank.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

3.1 The Parish Council view is contrary to the Officer recommendation. In addition the Local Shropshire Council Members has requested determination by Committee. The Principal Officer, in consultation with the Committee Chairman and Vice Chairman, consider that the material planning considerations in this case warrant consideration by the South Planning Committee.

4.0 Community Representations

4.1 - Consultee Comments

4.1.1 Eardington Parish Council - Members of Eardington Parish Council have considered the amendments to the original plans at 9,10 and 11 Lower Forge Cottages and object to the proposals.

4.1.2 SC Conservation - The amended plans have taken on board previous concerns and advice and have resulted in a scheme that is felt to reach a balance between the extension of the properties to enable their functional use and the impact upon the character of the terrace. The proposed scheme is now considered to be acceptable from a Conservation perspective to enable these derelict properties to be retained.

4.1.3 SC Ecology – An Extended Phase 1 Survey was carried out on this site in April 2017 by Salopian Consultancy. This was followed by bat activity surveys between May and July 2017. Conditions and informatives are recommended in relation to the Survey content. Additionally, a European Protected Species 3 Tests Matrix must be included in the Planning Officer’s Report and discussed/minuted at nay Committee at which the application is considered.

4.1.4 SC Drainage – Informative recommended in relation to designing a sustainable drainage scheme for the disposal of surface water from the development.

4.1.5 SC Rights Of Way - The application proposes access over a route that is recorded as public footpath no 17A and does not appear to carry public vehicular rights. The applicant is very strongly advised to satisfy themselves that they are able to demonstrate a sufficient vehicular right of access before committing further resources to the proposal. Informative recommended in relation to the use of the right of way.

4.2 - Public Comments

4.2.1 Site notice erected on 10th February 2017. Two public representations received objecting to the proposal as submitted. These are available to view in full on file, however are summarised as follows:

- o The extension has a footprint larger than the original.
- o The current footprint of the building could have been used to create 2 rather than 3 dwellings.
- o It would have a huge visual impact not just on the development site, but on the terrace as a whole, and the neighbouring properties.
- o The granting of permission for this development would set a precedent

which will see further development of a similar scale in the hamlet.

- o The extension constructed of large expanses of glass, timber cladding and render will not harmonise with the current row of cottages.
- o The materials are not appropriate for a small historic hamlet in the countryside.
- o At present the row of cottages and other properties adjacent are served by two lanes which meet and run across the frontage of the development site. These lanes are largely of soil and rubble and are often in a poor state needing regular repair by residents to deep them useable. There are approximately 12 car drivers living in or close to the cottages, the proposed 6 parking spaces will mean around a 50% increase in the sue of the lanes.
- o It will damage the open aspect and reduce the natural light to no. 8 Lower Forge Cottages.

4.2.2 Following notification of the amended plans, a further two letters of objection have been received which repeat the previous representations and add the following concerns;

- o The amendments do not address the valid informed comments made by the Conservation Officer on 24th February 2017.
- o The NPPF states that where there is evidence of deliberate neglect or damage to a heritage asset this deteriorated state should not be taken into account in any decision.
- o It is understood that the applicant wishes to off-set the renovation costs by increasing the accommodation, but in extending across the entire front, the proposals do not comply with local policy.
- o The proposed conversions will be 60cm off the neighbouring property line with the wall 3.12m high, extending out by 4.1m which will block the next door property.
- o Suggested plan provided showing very similar, but broken up, single storey flat roof extensions.

5.0 THE MAIN ISSUES

- o Principle of development
- o Affordable housing
- o Design, scale and character
- o Impact on neighbours/residential amenity
- o Ecology
- o Access

6.0 OFFICER APPRAISAL

6.1 Principle of development

6.1.1 A key objective of both National and Local Planning Policy is to concentrate new residential development in locations which promote economic, social and environmental sustainability. Specifically, Core Strategy Policies CS1, CS3, CS4, CS5 and CS11 seek to steer new housing to sites within Market Towns, other 'Key Centres' and certain named villages ('Community Hubs and Clusters') as identified

in the SAMDev Plan. Sporadic new residential development in open countryside is unacceptable unless there are exceptional circumstances.

6.1.2 The proposed site falls within open countryside, outside of any development boundaries designated under existing local planning policies. Under LDF Core Strategy Policy CS5 – Countryside and Green Belt, development proposals on appropriate sites which maintain and enhance countryside vitality and character will be permitted where they improve the sustainability of rural communities by bringing local and community benefits, particularly where they relate to a list of specific types of development which includes open market residential conversions, in addition to affordable dwellings, development for agriculture and economic purposes, farm diversification and schemes for the benefit of tourism. However, open market residential conversions will only be considered where respect for a heritage asset and high standards of sustainability are achieved.

6.1.3 This proposal is unusual in that it concerns 3 no. cottages which have most recently been used as a single dwelling and which are now proposed to be reinstated as 3 no. properties but require extension in order to achieve modern living standards (substantial refurbishment/internal re-configuration works would also be required if the building were to be used as a single dwelling). Additionally, the cottages are considered to be Non Designated Heritage Assets worthy of protection.

6.1.4 Paragraphs 2.25 and 2.26 of the Supplementary Planning Document (SPD) on the Type and Affordability of housing note the following in relation to sub-divisions in the countryside:

2.25 Core Strategy Policy CS5 controls the countryside and Green Belt from inappropriate development whilst allowing, “development proposals on appropriate sites which maintain and enhance countryside vitality and character. . . where they improve the sustainability of rural communities by bringing local economic and community benefits”. Sub-divisions of existing residential properties can improve sustainability by helping rebalance the housing stock, particularly in the countryside where there can be a shortage of smaller dwellings.

2.26 Sub-divisions also enable rural communities to be adaptable and more resilient to changing economic and demographic needs. In rural areas there are fewer properties available and this can make it difficult for residents to find suitable property in their local area to accommodate their changing needs. For example if they wish to downsize, and/or accommodate the needs of other family members, sub-division is an option that avoids them having to leave the local community and its social support network. Such sub-divisions may be eligible for a nil or reduced affordable housing contribution, either as some form of “low cost ownership” or on the ground of meeting specialist housing needs, where they enable a current resident to meet their needs without leaving their home community.

6.1.5 The proposal would provide 2 no. two bedroom and 1 no. 3 bedroom open market dwellings as smaller properties within a rural community in accordance with the SPD as detailed in 6.1.4 above. Justification has been submitted by the agent with this application to demonstrate that provision of fewer dwellings from the cottages

would not be financially viable, and whilst extension is required to achieve 3 no. properties which offer modern living standards, it is considered that significant works would be required to the property however many dwellings resulted. The rest of the terrace has benefitted from a number of extensions, including two storey additions, which have already impacted on its original character. It is considered that the proposed plans as amended show respect for the cottages as a Non Designated Asset and which would bring these units back into a sustainable residential use, preserving the building for future generations. The principle of the development is therefore acceptable.

6.2 Affordable housing

- 6.2.1 LDF Core Strategy Policy CS11- Type and Affordability of Housing, requires an affordable housing contribution on all new open market residential development. For one dwelling this would equate to a financial contribution.
- 6.2.2 The Minister of State for Housing and Planning, Brandon Lewis MP issued a Written Ministerial Statement (WMS) on 28th November 2014 announcing that Local Authorities should not request affordable housing contributions on sites of 10 units or less (and which have a maximum combined gross floor space of 1,000sq m), or 5 units or less in designated protected rural areas.
- 6.2.3 Reading and West Berkshire Councils sought to challenge the WMS at the High Court (Case Ref 76.2015) and on 31st July 2015 Mr Justice Holgate quashed the WMS and the Government subsequently withdrew relevant commentary from the National Planning Practice Guidance. From this point Shropshire Council continued to apply its affordable housing policy.
- 6.2.4 The Government challenged this decision through the Court of Appeal which overturned Mr Holgate's decision on 11th May 2016 (Case Ref C1/2015/2559). Consequently the WMS still applies and reflected in amended NPPG of the 19th May 2016. In addition to this the Housing & Planning Act gained Royal Assent on May 12th 2016 and this gives power to Government to make secondary legislation to achieve the same result – i.e. set minimum thresholds for affordable housing contributions.
- 6.2.5 At this juncture, in accordance with the view of the Planning Inspectorate it is considered that the WMS is a material consideration. Shropshire Council therefore accepts that the WMS applies as a significant material consideration and this means that the Council will not automatically require an AHC for applications for 10 or less dwellings and less than 1,000m² floor area in the majority of cases where the site is not located in a designated rural area.
- 6.2.6 However this cannot be a blanket rule and as such there may be exceptions to this. The Court of Appeal judgement referred to a statement made by the Government's Counsel in the High Court that:-

*“(i) As a matter of law the new national policy is **only one of the matters which has to be considered under section 70(2) of TCPA 1990 and section 38(6) of TCPA 2004 when determining planning applications or formulating local plan policies (section 19(2) of PCPA 2004), albeit it is a***

matter to which the Secretary of State considers ‘very considerable weight should be attached’;”

The Court of Appeal agreed with this proposition and confirmed that the development plan remains the starting point for decision taking although it is not the law that greater weight must be attached to it than other considerations. The WMS is policy, not binding law and does not countermand the requirement in s38(6) of the 2004 Act or s70(2) of the 1990 Act.

6.2.7 The Council’s position is therefore that the WMS is a significant material consideration but it does not replace or automatically override the development plan as the starting point for planning decisions. Consequently there may still be cases where the Council considers that its adopted policy attracts greater weight in the planning balance than the WMS.

6.2.8 The development plan remains the starting point for decision taking, and this includes Policy CS11 of the Core Strategy which requires an affordable housing contribution on all new open market residential development and the applicant has indicated a willingness to provide such a contribution by submitting an Affordable Housing Contribution Proforma and entering into the Section 106 Agreement process. The WMS is a significant material consideration and postdates the Core Strategy therefore can be regarded as more up to date in relation to affordable housing contributions, but does not replace or automatically override the development plan as the starting point for taking decisions. In this case, the site does not fall within a location where a significant need for affordable housing is evidenced. However, the building is already in situ as an uninhabitable single dwelling and significant work including some extension, is to be carried out in order to make it fully habitable as 3 no small scale dwellings for which there is a demand in Shropshire’s rural communities. The work required to reinstate the building to three dwellings of a smaller scale, more desirable and sustainable within their rural location, attracts some cost for the developer, and would provide a net social gain of two, with or without an affordable housing contribution. For these reasons, it is considered that greater weight can be given to the WMS than the development plan and the affordable housing contribution would not be required in this case having regard to the material change in national policy discussed above.

6.3 Design, scale and character

6.3.1 Policy CS6 of the Shropshire Council Local Development Framework Core Strategy states that development should conserve and enhance the built environment and be appropriate in its scale and design taking account of local character and context. It further states that development should safeguard residential and local amenity. Policy MD2 of the emergent SAMDev Plan builds on Policy CS6 providing additional detail on how sustainable design will be achieved. For a development proposal to be considered acceptable it is required to contribute to and respect locally distinctive or valued character and existing amenity value by:

- i. Responding appropriately to the form and layout of existing development and the way it functions, including mixture of uses, streetscape, building heights and lines, scale, density, plot sizes and local patterns of movement; and

- ii. Reflecting locally characteristic architectural design and details, such as building materials, form, colour and texture of detailing, taking account of their scale and proportion; and
- iii. Protecting, conserving and enhancing the historic context and character of heritage assets, their significance and setting, in accordance with MD13; and
- iv. Enhancing, incorporating or recreating natural assets in accordance with MD12.

6.3.2 LDF Core Strategy Policy CS17 is also concerned with design in relation to its environment, but places the context of the site at the forefront of consideration i.e. that any development should protect and enhance the diversity, high quality and local character of Shropshire's built, natural and historic environment and does not adversely affect the values and function of these assets. Policy MD13 of the SAMDev Plan sets out criteria by which Shropshire's heritage assets will be protected, conserved, sympathetically enhanced and restored. Policy MD12 of the SAMDev Plan sets out criteria by which the avoidance of harm to Shropshire's natural assets and their conservation, enhancement and restoration will be achieved.

6.3.3 The National Planning Policy Framework supports the local policy outlined above under paragraph 17, where one of the listed overarching roles of the planning system in decision taken is to always '*seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings*'. Paragraphs 58, 60 and 64 within Section 7 – Requiring Good Design, further promote the requirement for a development to respond to local character, reinforce local distinctiveness, and improve the character and quality of an area and the way it functions, not just for the short term, but over the lifetime of the development.

6.3.4 For this particular proposal, there is a balance to be achieved between ensuring that the building can be brought back into a use viable for both the rural community and for the developer, and doing so in a way which secures high quality design and good standard of amenity for all future occupants of the building. Detailed discussions have taken place during the course of this application in relation to the design, scale, massing and materials of the proposed extensions and amended plans have been submitted which it is considered have taken on board officers advice in these respects.

6.3.5 Most significantly, the projection of both the single storey and two extensions out to the front have been reduced, and the pitched roof of the single storey front extension has been exchanged for a flat roof thus allowing more of the original cottages to remain exposed i.e. the first floor under eaves windows remain unadulterated with brick walls on three sides, the upper visual proportions of the cottages therefore being retained. At ground floor level the simple, clean lined modern extension proposed across the front elevation would not compete with the traditional appearance of the cottage, and would be read as a contemporary addition in the cottages continuing story. Large areas of glazing have been included to allow reference to the original ground floor level exterior, but not so many as to impede the personal privacy of the occupiers. With regards to the proposed two

storey extension, this is by no means a precedent on this terrace as there are previous two storey extensions at nos. 7 and 8. Its shortening and widening into a single storey/two storey addition are considered to result in better proportioned structures which respect the context of the existing terrace. The single storey pantry/kitchen extension references an existing lean-to brick outbuilding located on the end of the terrace which would be removed to accommodate the proposed extension.

- 6.3.5 The location of the various proposed wall materials has been carefully thought out to best preserve and enhance the appearance of the existing building. Due to the age of the building and the brick mix used for its construction, this would be difficult to match appropriately without resulting in a pastiche look. For this reason a mix of timber cladding and render has been selected both to differentiate from and contrast with the existing brick thus highlighting its attributes. Aluminium framed double glazed windows are indicated for the larger glazing in order to retain a clean aspect. Where the roof of the proposed two storey extension integrates with the existing property the tiles will match tying it together. It is likely that large sections of the roof will in any case need replacing.
- 6.3.6 The cottages are not Listed nor are they within a Conservation Area and whilst they are regarded as Non Designated Heritage Assets, the character of the terrace as a whole has already been distorted by previous extensions, some of which are substantial two storey additions, on the cottages at nos. 5 – 8. The submitted scheme as amended is considered to reach a balance between the extension of the properties to enable their functional use now and for future generations, and the impact upon the character of the terrace.

6.4 Impact on neighbours/residential amenity

- 6.4.1 It is not considered that there will be a significant impact from overlooking, overbearing or overshadowing on neighbouring residential properties. Nos 9, 10 and 11 Lower Forge Cottages are located on the north east end of the terrace, and therefore in a location where any extension to them is highly unlikely to interfere with the daily path of the sun in relation to the remainder of the terrace to the south west. The proposed two storey extension will be located a minimum of approximately 18m from nos. 5 - 8 Lower Forge Cottages and the nearest neighbour otherwise is the applicants' property approximately 30m to the north east. Whilst the proposed single storey extension is indicated to be adjacent to the boundary at no. 8, it would only project approximately 3.75m forward and be a height of 2.5m, 0.5m above the height of fencing which could be erected under permitted development rights along the divide.
- 6.4.2 No openings are proposed on elevations which face towards nos. 5- 8 Lower Forge Cottages, and the large window on the single storey extension closest to no. 8 is inset from the boundary by approximately 2.35m. The main views from the proposed extensions will therefore be directly to the south east towards the River Severn. There is a first floor bedroom window proposed on the north east elevation facing towards Coachmans Cottage, however it is considered that the 30m distance between the properties – 20m to the boundary, is sufficient to minimise any overlooking potential.

6.5 Ecology

6.5.1 As bat roosts have been identified within the building, the proposed works would need to be carried out under a European Protected Species Licence from Natural England, however this necessity is recognised within the submitted Ecological Appraisal. It is also noted within that document that the works provide an opportunity for protected species enhancements by way of the inclusion of bat and bird boxes. SC Ecology consider that an EPS 3 Tests Matrix should be included as part of this report and conditions and informatives can be applied which would appropriately manage the potential for European Protected Species at the site.

6.6 Access

6.6.1 Vehicular access to the site is currently gained from the track at the end of the plots between them and the river. This track serves all the cottages in the terrace and is looped around the two terraces and Coachmans Cottage. Whilst it is likely that vehicular activity along this track would increase as a result of the proposal, the level incurred from two additional dwellings (which in any case previously existed) is not considered to result in a sufficiently adverse impact to raise concern. The area of outside amenity space allocated at the front of the dwelling is more than adequate to accommodate the 6 no. car parking spaces proposed. The cottages at nos. 5 -8 already benefit from parking spaces and garages along the track so that the new spaces proposed would continue along the same line.

6.6.2 SC Public Rights of Way have noted that the track between the plots and the river is recorded as public footpath no. 17A and does not appear to carry public vehicular rights. This is a matter which could apply to the whole Lower Forge Cottages terrace and is however one which is not a material consideration as the grant of Planning Permission would not imply the existence of any right for the benefit of the applicant to use that way with vehicles. The agent has been made aware of this, and the information will also be imparted as an informative.

7.0 CONCLUSION

7.1 It is considered that this proposal is not contrary to adopted policies as it is an appropriate division of and extension to a building to form three smaller dwellings resulting in a more sustainable form of development within the countryside. The plans as amended have achieved a balance between ensuring that the building can be brought back into use and securing a high quality design and good standards of amenity for all future occupants of the building. By its scale and design the proposed scheme would respect the character of this previously altered traditional terrace and the context of the site without adversely impacting on the residential amenities of neighbouring dwelling. Any potential for European Protected Species at the site can be satisfactorily managed as described in the submitted Ecological Appraisal and by condition.

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 gives 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 1990.

9.0 Financial Implications

There are likely financial implications if the decision and / or imposition of conditions is challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependent on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – insofar as

they are material to the application. The weight given to this issue is a matter for the decision maker.

10. Background

Relevant Planning Policies

Central Government Guidance:
National Planning Policy Framework
National Planning Practice Guidance

LDF Core Strategy Policies:
CS1 Strategic Approach
CS5 Countryside And Green Belt
CS6 Sustainable Design And Development Principles
CS11 Type And Affordability Of Housing
CS17 Environmental Networks
CS18 Sustainable Water Management

Site Allocations & Management Of Development (SAMDev) Plan Policies:
MD1 Scale and Distribution of development
MD2 Sustainable Design
MD7a Managing Housing Development In The Countryside
MD12 Natural Environment
MD13 Historic Environment

Supplementary Planning Documents (SPDs):
Type And Affordability Of Housing

RELEVANT PLANNING HISTORY:

BR/78/0418 – The installation of a septic tank to serve a single dwelling at 9 and 10 Lower Forge. Granted 14th August 1978.

11. Additional Information

View details online: <https://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=OK3E5RTDJC800>

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information):

- Design and Access Statement dated January 2017.
- Structural Condition Survey Report by Geomitre Consultants Ltd dated 24th March 2016.
- Ecological Appraisal by Salopian Consultancy dated 21st August 2017
- Lower Forge Viability Calculations received 12th April 2017
- Lettings Advice Letter from McCartneys LLP dated 7th April 2017

Cabinet Member (Portfolio Holder)
Cllr R. Macey

Local Member
Cllr Robert Tindall

Appendices
APPENDIX 1 – Conditions
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APPENDIX 1

Conditions

STANDARD CONDITIONS

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. Samples of all the materials to be used externally on the dwellings and hard surfacing hereby approved, shall have been first submitted to and approved by the Local Planning Authority in writing before being used in the development. The development shall be carried out in accordance with the approval details.

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

CONDITIONS THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

4. Details of the roof construction including details of eaves, undercloaks ridges, valleys and verges shall be submitted to and approved in writing by the Local Planning Authority before the development commences. The development shall be carried out in complete accordance with the approved details.

Reason: To safeguard the architectural and historic interest and character of the area. This information is required prior to the commencement of the development as it relates to matters which need to be confirmed before the development proceeds in order to ensure a sustainable development.

5. Details of exterior soil and vent pipes, waste pipes, rainwater goods, boiler flues and ventilation terminals, meter boxes, exterior cabling and electrical fittings shall be submitted to and approved in writing by the Local Planning Authority before the commencement of works. The development shall be carried out in accordance with the approved details.

Reason: To safeguard the architectural and historic interest and character of the area. This information is required prior to the commencement of the development as it relates to matters which need to be confirmed before the development proceeds in order to ensure a sustainable development.

6. No development shall take place until either:
- a) a European Protected Species (EPS) Mitigation Licence with respect to bats has been obtained from Natural England and submitted to the Local Planning Authority;
or
 - b) a statement from an appropriately qualified and experienced ecologist has been submitted in writing to the Local Planning Authority explaining why a licence is not required and setting out any additional mitigation measures required.

Reason: To ensure the protection of bats, which are European Protected Species. This information is required prior to the commencement of the development as it relates to matters which need to be confirmed before the development proceeds in order to ensure a sustainable development.

7. No development shall take place (including demolition, ground works and vegetation clearance) until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include:
- a) An appropriately scaled plan showing 'Wildlife/Habitat Protection Zones' where construction activities are restricted, where protective measures will be installed or implemented and where ecological enhancements (e.g. hibernacula, integrated bat and bird boxes, hedgehog-friendly gravel boards and amphibian-friendly gully pots) will be installed or implemented;
 - b) Details of protective measures (both physical measures and sensitive working practices) to avoid impacts during construction;
 - c) Requirements and proposals for any site lighting required during the construction phase;
 - d) A timetable to show phasing of construction activities to avoid harm to biodiversity features (e.g. avoiding the bird nesting season);
 - e) The times during construction when an ecological clerk of works needs to be present on site to oversee works;
 - f) Identification of Persons responsible for:
 - i) Compliance with legal consents relating to nature conservation;
 - ii) Compliance with planning conditions relating to nature conservation;
 - iii) Installation of physical protection measures during construction;
 - iv) Implementation of sensitive working practices during construction;
 - v) Regular inspection and maintenance of physical protection measures and monitoring of working practices during construction; and
 - vi) Provision of training and information about the importance of 'Wildlife Protection Zones' to all construction personnel on site.
 - g) Pollution prevention measures.

All construction activities shall be implemented strictly in accordance with the approved plan, unless otherwise approved in writing by the Local Planning Authority.

Reason: To protect features of recognised nature conservation importance, in accordance with MD12, CS17 and section 118 of the NPPF. This information is required prior to the commencement of the development as it relates to matters which need to be confirmed before the development proceeds in order to ensure a sustainable development.

8. No development shall take place (including demolition, ground works and vegetation clearance) until a Landscaping Plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include:
- a) Planting plans, creation of wildlife habitats and features and ecological enhancements (e.g. hibernacula, integrated bat and bird boxes, hedgehog-friendly gravel boards and amphibian-friendly gully pots);
 - b) Written specifications (including cultivation and other operations associated with plant, grass and wildlife habitat establishment);
 - c) Schedules of plants, noting species (including scientific names), planting sizes and proposed numbers/densities where appropriate;
 - d) Native species used are to be of local provenance (Shropshire or surrounding counties);
 - e) Details of trees and hedgerows to be retained and measures to protect these from damage during and after construction works;
 - f) Implementation timetables.

The plan shall be carried out as approved, unless otherwise approved in writing by the Local Planning Authority. This information is required prior to the commencement of the development as it relates to matters which need to be confirmed before the development proceeds in order to ensure a sustainable development.

Reason: To ensure the provision of amenity and biodiversity afforded by appropriate landscape design.

9. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- the parking of vehicles of site operatives and visitors
 - loading and unloading of plant and materials
 - storage of plant and materials used in constructing the development
 - the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - wheel washing facilities
 - measures to control the emission of dust and dirt during construction
 - a scheme for recycling/disposing of waste resulting from demolition and construction works
 - a Traffic Management Plan

Reason: To avoid congestion in the surrounding area and to protect the amenities of the area. This information is required prior to the commencement of the development as it relates to matters which need to be confirmed before the development proceeds in order to ensure a sustainable development.

CONDITIONS THAT REQUIRE APPROVAL DURING THE CONSTRUCTION/PRIOR TO THE OCCUPATION OF THE DEVELOPMENT

10. Prior to the commencement of the relevant work details of all external windows and doors and any other external joinery shall be submitted to and approved in writing by the Local Planning Authority. These shall include full size details, 1:20 sections and 1:20 elevations of each joinery item which shall then be indexed on elevations on the approved drawings. All doors and windows shall be carried out in complete accordance with the agreed details.

Reason: To safeguard the architectural and historic interest and character of the area.

11. Prior to first occupation/use of the buildings, the makes, models and locations of bird boxes shall be submitted to and approved in writing by the Local Planning Authority. A minimum of 4 artificial nests, of either integrated brick design or external box design, suitable for sparrows, starlings, swifts and/or small birds shall be erected on the site. The boxes shall be sited at least 2m from the ground on a suitable tree or structure at a northerly or shaded east/west aspect (under eaves of a building if possible) with a clear flight path, and thereafter maintained for the lifetime of the development.

Reason: To ensure the provision of nesting opportunities for wild birds, in accordance with MD12, CS17 and section 118 of the NPPF.

12. Prior to the erection of any external lighting on the site, a lighting plan shall be submitted to and approved in writing by the Local Planning Authority. The lighting plan shall demonstrate that the proposed lighting will not impact upon ecological networks and/or sensitive features, e.g. bat and bird boxes (required under separate planning conditions). The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust's Artificial lighting and wildlife: Interim Guidance: Recommendations to help minimise the impact artificial lighting (2014). The development shall be carried out strictly in accordance with the approved details and thereafter retained for the lifetime of the development.

Reason: To minimise disturbance to bats, which are European Protected Species.

CONDITIONS THAT ARE RELEVANT FOR THE LIFETIME OF THE DEVELOPMENT

13. All demolition, development and biodiversity enhancements shall occur strictly in accordance with Section 3 of the Ecological Appraisal (Salopian Consultancy, 21/08/17.), unless otherwise approved in writing by the Local Planning Authority.

Reason: To ensure the protection of and enhancements for bats, which are European Protected Species.

14. No construction and/or demolition works shall take place before 09:00 a.m. on weekdays and Saturdays, nor after 17:00 p.m. on weekdays and 13:00 p.m. on Saturdays; nor at anytime on Sundays, Bank or Public Holidays.

Reason: To protect the amenities of occupiers of nearby properties from potential nuisance.

15. No further windows or other openings shall be formed in any elevation of the extensions other than those hereby approved.

Reason: To preserve the amenity and privacy of adjoining properties.

16. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) 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, D or G 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.

Informatives

1. If your application has been submitted electronically to the Council you can view the relevant plans online at www.shropshire.gov.uk. Paper copies can be provided, subject to copying charges, from Planning Services on 01743 252621.
2. Where there are pre commencement conditions that require the submission of information for approval prior to development commencing at least 21 days notice is required to enable proper consideration to be given.
3. Your attention is specifically drawn to the conditions above that require the Local Planning Authority's approval of materials, details, information, drawings etc. In accordance with Article 21 of the Town & Country Planning (Development Management Procedure) Order 2010 a fee is required to be paid to the Local Planning Authority for requests to discharge conditions. Requests are to be made on forms available from www.planningportal.gov.uk or from the Local Planning Authority. The fee required is £97 per request, and £28 for existing residential properties.

Failure to discharge pre-start conditions will result in a contravention of the terms of this permission; any commencement may be unlawful and the Local Planning Authority may consequently take enforcement action.

4. The active nests of all wild birds are protected under the Wildlife and Countryside Act 1981 (as amended). An active nest is one being built, contains eggs or chicks, or on which fledged chicks are still dependent.

It is a criminal offence to kill, injure or take any wild bird; to take, damage or destroy an active nest; and to take or destroy an egg. There is an unlimited fine and/or up to six months imprisonment for such offences.

All conversion, renovation and demolition work in buildings should be carried out outside of the bird nesting season which runs from March to August inclusive.

If it is necessary for work to commence in the nesting season then a pre-commencement inspection of the buildings for active bird nests should be carried out. If buildings cannot be clearly seen to be clear of nests then an appropriately qualified and experienced ecologist should be called in to carry out the check. Only if there are no active nests present should work be allowed to commence.

If during construction birds gain access to any of the buildings and begin nesting, work must cease until the young birds have fledged.

5. Widespread reptiles (adder, slow worm, common lizard and grass snake) are protected under the Wildlife and Countryside Act 1981 (as amended) from intentional killing and injury. Reasonable precautions should be taken during works to ensure that these species are not harmed.

If piles of rubble, logs, bricks, other loose materials or other potential refuges are to be disturbed, this should be done by hand and carried out during the active season for reptiles (approximately 31st March to 15th October) when the weather is warm. Any reptiles or amphibians discovered should be allowed to naturally disperse. Advice should be sought from an appropriately qualified and experienced ecologist if large numbers of reptiles or amphibians are present.

6. The following procedures should be adopted to reduce the chance of killing or injuring small animals, including reptiles, amphibians and hedgehogs.

The grassland should be kept short prior to and during construction to avoid creating attractive habitats for wildlife.

All building materials, rubble, bricks and soil must be stored off the ground, e.g. on pallets, in skips or in other suitable containers, to prevent their use as refuges by wildlife.

Where possible, trenches should be excavated and closed in the same day to prevent any wildlife becoming trapped. If it is necessary to leave a trench open overnight then it should be sealed with a close-fitting plywood cover or a means of escape should be provided in the form of a shallow sloping earth ramp, sloped board or plank. Any open pipework should be capped overnight. All open trenches and pipework should be inspected at the start of each working day to ensure no animal is trapped.

7. A sustainable drainage scheme for the disposal of surface water from the development should be designed and constructed in accordance with the Councils Surface Water Management: Interim Guidance for Developers document. It is available on the councils website at: www.shropshire.gov.uk/drainage-and-flooding/local-flood-risk-management-strategy/.

The provisions of the Planning Practice Guidance, in particular Section 21 Reducing the causes and impacts of flooding, should be followed.

Preference should be given to drainage measures which allow rainwater to soakaway naturally. Connection of new surface water drainage systems to existing drains / sewers should only be undertaken as a last resort, if it can be demonstrated that infiltration techniques are not achievable.

8. The application proposes access over a route that is recorded as public footpath no 17A. Please ensure that the following criteria is adhered to:
- The right of way must remain open and available at all times and the public must be allowed to use the way without hindrance both during development and afterwards.
 - Vehicular movements (i.e. works vehicles and private vehicles) must be arranged to ensure the safety of the public on the right of way at all times.
 - Building materials, debris, etc must not be stored or deposited on the right of way.
 - There must be no reduction of the width of the right of way.
 - The alignment of the right of way must not be altered.
 - The surface of the right of way must not be altered without prior consultation with this office; nor must it be damaged.
 - No additional barriers such as gates or stiles may be added to any part of the right of way without authorisation.
9. You are advised that this application proposes access over a route that is recorded as public footpath no 17A and does not appear to carry public vehicular rights. The applicant is very strongly advised to satisfy themselves that they are able to demonstrate a sufficient vehicular right of access before committing further resources to the proposal. Neither the granting of Planning Permission, nor any associated obligations relating to the proposed access, either grant or imply the existence of any right for the benefit of the applicant to use that way with vehicles.
10. In determining the application the Local Planning Authority gave consideration to the following policies:

Central Government Guidance:
National Planning Policy Framework
National Planning Practice Guidance

LDF Core Strategy Policies:
CS1 Strategic Approach
CS5 Countryside And Green Belt
CS6 Sustainable Design And Development Principles
CS11 Type And Affordability Of Housing
CS17 Environmental Networks
CS18 Sustainable Water Management

Site Allocations & Management Of Development (SAMDev) Plan Policies:
MD1 Scale and Distribution of development
MD2 Sustainable Design
MD7a Managing Housing Development In The Countryside
MD12 Natural Environment
MD13 Historic Environment

Supplementary Planning Documents (SPDs):
Type And Affordability Of Housing

11. In arriving at this decision the Council has used its best endeavours to work with the applicant in a positive and proactive manner to secure an appropriate outcome as required in the National Planning Policy Framework paragraph 187.

APPENDIX 2

EUROPEAN PROTECTED SPECIES: The ‘three tests’

Application reference number, site name and description:

17/00298/FUL

9, 10 And 11 Lower Forge Cottages Eardington Bridgnorth Shropshire WV16 5LQ

Reconfiguration and upgrade of existing cottages including erection of single storey and two storey extensions to form 3 larger dwellings

Date:

4th September 2017

Officer:

Sophie Milburn

Assistant Biodiversity Officer

sophie.milburn@shropshire.gov.uk

Tel.: 01743 254765

Test 1:

Is the development ‘**in the interests of public health and public safety**, or for other imperative reasons of **overriding public interest**, including those of a social or economic nature and beneficial consequences of primary importance for the environment’?

The building is a deteriorated set of cottages of some historic merit. The reinstatement of its residential use and the preservation of the building is therefore in the public interest by providing high quality accommodation within a Non-Designated Heritage asset. The preservation of the property can only be assured by restoring it to its functional use to warrant its continued upkeep. Additionally, the proposal would help to address the requirement for smaller residential units within the rural area.

Test 2:

Is there ‘**no satisfactory alternative?**’

No, the alternative is for no maintenance or extension work to be carried out on the building leaving it to deteriorate and potentially harm the character and appearance of the surrounding rural environment. A high quality refurbishment with mitigation, compensation and enhancement measures for the bats is preferred.

Test 3:

Is the proposed activity ‘**not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status** in their natural range’?

Bat surveys between May and July 2017 identified an individual lesser horseshoe day roost and feeding perch and two soprano pipistrelle day roosts.

EPS offences under Article 12 are likely to be committed by the development proposal, i.e. damage or destruction of an EPS breeding site or resting place and killing or injury of an EPS.

The likely offences cannot be avoided through mitigation measures secured through planning conditions as the buildings are going to be converted.

Section 3 of the Ecological Appraisal (Salopian Consultancy, n.d.) sets out the following mitigation, compensation and enhancement measures, which will form part of the licence application:

- An Ecological Clerk of Works (ECW) will oversee the works.
- The ECW will carry out a pre-commencement walkover.
- The ECW will provide a toolbox talk to site workers.
- Two Schwegler 2F bat boxes ‘will be erected on the southern eastern face of the brick shed to ensure place of refuge ... throughout the construction period.’
- Demolition will take place between October and March when bats are least likely to be present.
- ‘Works on the building in areas highlighted as having the potential to support Bats, will occur under the direct supervision of the ECW. These works will be undertaken following four consecutive nights and days above 5°C.’
- If a bat is found at any stage, works will halt and the ECW will be informed. ‘The Bat(s) will either be allowed to disperse naturally or the ECW will carefully lift the Bat in gloved hands and carefully place it into a Bat box or suitably dark place on the site.’
- A lesser horseshoe roost will be created ‘within a stand alone structure separate to the proposed re-built.’ ‘The brick shed ... would provide a suitable replacement night perch/day roost for this species.’
- Crevices will be created under roofing tiles, under ridge tiles and ‘under the gables onto the wall plate using ... beneath sections of barge board/soffit.’
- Integrated bat boxes will be installed on ‘the east gable end and northern aspect of the proposed cottages.
- Bituminous roofing felt will be used ‘to avoid the risk associated with spun-bond filaments in modern roofing membranes which are well document as causing entrapment and death of bats.’
- ‘Lighting around the site will be on a short timed setting and down lighting to avoid disturbing [bats] and retain dark corridors for [bats] to forage and commute through the surrounding landscape.’

I am satisfied that the proposed development will not be detrimental to the maintenance of the populations of lesser horseshoes and soprano pipistrelles at a favourable conservation status within their natural range, provided that the conditions set out in the response from Sophie Milburn to Consultee Access (dated 4th September 2017) are included on the decision notice and are appropriately enforced.

The conditions are:

- Working in accordance with protected species survey;
- European Protected Species Licence; and
- Lighting plan.

Guidance

The ‘three tests’ must be satisfied in all cases where a European Protected Species may be affected by a planning proposal and where derogation under Article 16 of the EC Habitats Directive 1992 would be required, i.e. an EPS licence to allow an activity which would otherwise be unlawful.

In cases where potential impacts upon a European Protected Species can be dealt with by appropriate precautionary methods of working which would make derogation unnecessary (since no offence under the legislation is likely to be committed), it is not necessary to consider the three tests.

The planning case officer should consider tests 1 (overriding public interest) and 2 (no satisfactory alternative). Further information may be required from the applicant/developer/agent to answer these tests. This should not be a burdensome request as this information will be required as part of the Natural England licence application. If further information is required, it can be requested under s62(3) of the Town and Country Planning Act 1990.

Test 3 (favourable conservation status) will be considered by SC Ecology, with guidance from Natural England.

A record of the consideration of the three tests is legally required. This completed matrix should be included on the case file and in the planning officer’s report, and should be discussed and minuted at any committee meeting at which the application is discussed.

As well as the guidance provided below, pages 6 and 7 of the Natural England Guidance Note, *Application of the Three Tests to Licence Applications*, may assist the planning officer to answer tests 1 and 2.

Answering the three tests

Test 1

Is the development ‘in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment?’

Preserving public health or public safety must also be shown to constitute a reason of **overriding public interest**. You need to demonstrate that action is required to alleviate a clear and imminent danger to members of the general public, e.g.:

1. If an unstable structure (e.g. a building or tree) is involved, either through neglect or outside influences (e.g. severe weather or seismic events), supporting evidence from an appropriately qualified person such as a structural engineer, arboriculturalist or tree surgeon should be sought.
2. If vandalism or trespass is used as an argument, evidence of reasonable measures to exclude the general public from the site must be presented. Evidence may be provided by the local police or fire services in relation to the number of incidents dealt with.

Imperative reasons of overriding public interest

Only public interests can be balanced against the conservation aims of the EC Habitats Directive (1992). Projects that are entirely in the interest of companies or individuals would generally not be considered covered.

Test 2

Is there ‘no satisfactory alternative?’

An assessment of the alternative methods of meeting the need identified in test 1 should be provided. If there are any viable alternatives which would not have an impact on a European Protected Species, they must be used in preference to the one that does. Derogations under the EC Habitats Directive (1992) are the last resort.

Where another alternative exists, any arguments that it is not satisfactory will need to be convincing. An alternative cannot be deemed unsatisfactory because it would cause greater inconvenience or compel a change in behaviour.

This test should identify a) the problem or specific situation that needs to be addressed, b) any other solutions, and c) whether the alternative solutions will resolve the problem or specific situation in (a).

Test 3

Is the proposed activity ‘not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range’?

Assessment of the impact of a specific development will normally have to be at a local level (e.g. site or population) in order to be meaningful in the specific context.

Two things have to be distinguished in this test: a) the actual conservation status of the species at both a biogeographic and a (local) population level; and b) what the impact of the proposal would be.

In such cases where the conservation status is different at the different levels assessed, the situation at the local population level should be considered first, although ultimately both should be addressed.

No derogation under the EC Habitats Directive (1992) can be granted if the proposal would have a detrimental effect on the conservation status or the attainment of favourable conservation status for a European Protected Species at all levels. The net result of a derogation should be neutral or positive for a species.

In the case of the destruction of a breeding site or resting place it is easier to justify derogation if sufficient compensatory measures offset the impact and if the impact and the effectiveness of compensation measures are closely monitored to ensure that any risk for a species is detected.

Compensation measures do not replace or marginalise any of the three tests. All three tests must still be satisfied.

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