



# Appeal Decision

Site visit made on 22 June 2022

**by Tamsin Law BSc MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 July 2023**

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**Appeal Ref: APP/L3245/W/22/3291306**

**Site adj. to Ashcroft, Hopton Wafers, DY14 0NB**

- 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 Mrs Jennifer R Perry against the decision of Shropshire Council.
- The application Ref 21/05298/FUL, dated 8 November 2021, was refused by notice dated 5 January 2022.
- The development proposed is the construction of 2 self-build dwellings with garages.

## Decision

1. The appeal is dismissed insofar as it relates to Plot 2. The appeal is allowed insofar as it relates to Plot 1 and planning permission is granted for the construction of a dwelling at Site adj Ashcroft, Hopton Wafers, DY14 0NB in accordance with the terms of the application, Ref 21/05298/FUL, dated 8 November 2021, subject to the conditions in the attached schedule.

## Preliminary Matters

2. Notwithstanding the reasons for refusal both main parties have confirmed that the appeal site is not located within the Shropshire Hills Area of Outstanding Beauty (AONB). I have considered the appeal on this basis.
3. Visibility splays have been submitted with the appeal. Whilst these were not submitted with the application, as part of the appeal process the Council and third parties have had the opportunity to comment on its contents. As such, I do not consider that my taking it into account would prejudice any party.
4. For the reasons that follow, I find Plot 1 to be acceptable and it is clearly severable both physically and functionally from Plot 2. Therefore, I intend to issue a split decision in this case and allow the appeal in respect of the construction of a dwelling at Plot 1.

## Main Issues

5. The main issues are:
  - Whether the site is a suitable location for housing, having regard to local and national policies;
  - The effect of the proposed development on the character and appearance of the area;
  - The effect of the proposed development on the living conditions of nearby properties, with particular regard to privacy and light; and

- The effect of the proposed development on highway safety.

## Reasons

### *Suitable Location for Housing*

6. The site is located to the south of the A4117 and consists of an irregular shaped piece of open land which forms part of a field with an agricultural use. The field is bounded by a hedge and the A4117 to the north, agricultural land to the south and existing dwellings to the east. The land level of the field rises broadly from east to west.
7. Policy CS4 of the Shropshire Local Development Framework: Adopted Core Strategy, 2011, (CS) seeks to focus development within Community Hubs and Clusters. Any open market housing is required to make a sufficient contribution to improving local sustainability, via a mix of 'local needs' housing and community benefits in the form of contributions to affordable housing and identified local services, facilities and infrastructure.
8. Policies S6.2 and S6.2(ii) of the Shropshire Council Site Allocations and Management of Development Plan (2015) (SAMDev) identify Hopton Wafers as a Community Cluster. Policy S6.2(ii) states that limited infill of smaller, market priced houses on single plot developments immediately adjacent to existing development may be acceptable.
9. The proposal does not constitute the development of a single development plot but, whilst Policy CS6.2 states that such development may be acceptable, it does not say that other forms of development would not be.
10. The appeal site may not comprise a single plot, however Plot 1 would have existing residential dwellings to its east and south and the A4117 to its north. The orientation of Plot 1 would mean that it would face side on to the A4117 and appear as an infill between the road and the adjacent dwelling (Ashcroft). It would share an access with Ashcroft and would be located within the existing built area of the village. I see no sound reason why it should not be considered to be a suitable infill plot within the context of that existing development.
11. Plot 2 would have adjacent highways to its north and north-west and an existing dwelling (Ashcroft) to its south-east. Plot 1 would be located to its northeast, with open agricultural land to its south and south-west. Plot 2 would be accessed via Corley Road. Due to its location adjoining open agricultural land, Plot 2 would appear as an extension of built development into open countryside. It would not be located between built development and would therefore not be infill.
12. As such, the proposed development would therefore appear as encroachment into the open countryside and not as infill development. I have not been provided with any material consideration that would outweigh this policy which has been subject to a rigorous Local Plan Examination.
13. The description of development states that the proposal is for a self build dwelling. No evidence or information pertaining to its self-build nature has been submitted with the appeal and no legal agreement securing it as such has been provided. As such, I have dealt with the proposed dwellings as unrestricted open market dwellings.

14. For the above reasons, I conclude that the proposed dwelling at Plot 1 would be located in a suitable location, however the siting and location of Plot 2 would be in conflict with CS Policy CS4 and SAMDev Policy S6.2 which seek, amongst other things, to ensure that developments are limited infill of smaller, market priced houses on single plot developments adjacent to existing development and would therefore undermine the Council's housing strategy.

#### *Character and Appearance*

15. The appeal site is located in a rural area characterised by single and one and a half storey dwellings. Dwellings have been developed over time and there is a variety of designs and materials used. Dwellings adjacent to the appeal site are detached and set back from the highway behind front gardens and agricultural land, giving the area a spacious feel. This feeling of spaciousness combined with mature hedgerows and trees that line the highway give the area a rural, pleasant and verdant character.
16. The proposed development would introduce two dwellings into an area of undeveloped agricultural land, bringing built development closer to the highway. Whilst the proposed dwellings would be slightly taller than the immediate neighbouring dwellings, albeit on ground that slopes upwards, they have been designed to appear as 1.5 storey dwellings. The proposed dwellings would be of a similar form to and would utilise materials used in nearby properties. One dwelling would be finished with a timber frame, whilst this is not a common feature, would not detract from the overall character and appearance of the area.
17. The layout details dwellings set back from the road broadly in line with nearby dwellings. Whilst the proposal would not face the highway as other dwellings adjoining the A4117, the mixed character of nearby dwellings would mean that this would not appear at odds with the character of the area. The proposal would appear in the context of existing built form
18. Therefore, I conclude that the development would not be harmful to the character and appearance of the area. It would comply with CS Policies CS5, CS6 and CS17 and SAMDev Policies MD2 and MD12 which seek, amongst other things, to ensure that development is sympathetic to the character of the settlement; supports high quality design protects and enhances local character and distinctiveness. It would also comply with paragraph 130 of the Framework which seeks to ensure that developments are sympathetic to local character.

#### *Living Conditions*

19. The proposal would be located near two residential dwellings, Ashcroft and The Wafers. The site is at a higher level than The Wafers, and slopes steadily down towards The Wafers, meaning that the proposal would be at an elevated position in relation to the neighbouring dwelling. Ashcroft would be located at a similar level to Plot 1, with Plot 2, due to the slope, located at a slightly higher level.
20. The appellant notes that the distance between the proposed dwelling at Plot 1 and The Wafers is 34 metres. Whilst Plot 1 would look towards The Wafers and be located at a higher level, the distance maintained between the existing and proposed dwellings would limit any overlooking concerns. Additionally, this

distance would ensure that the proposed development would not have an overbearing impact on The Wafers or its associated garden.

21. The siting and orientation of both proposed dwellings would ensure sufficient distance is maintained from Ashcroft so as not to have a harmful impact on privacy. Plot 1 would be located forward of Ashcroft and set away from its boundary, whilst it would be taller than the existing dwelling it would the distance between the existing and proposed would ensure that the Plot 1 would not have an overbearing impact on Ashcroft.
22. As such there would be no unacceptable harm to the living conditions of the occupiers of The Wafers and Ashcroft and the proposed development complies with CS Policy CS6 which seeks to ensure that developments safeguard residential and local amenity. The proposal also complies with the advice set out in paragraph 130 of the Framework that seeks high standard of amenity for existing and future users.

### *Highway Safety*

23. The proposed development would utilise an existing access from the A4117 for Plot 1 and would utilise and improve an existing agricultural access onto a Class III highway for Plot 2. My visit to the appal site was a snapshot in time in regard to highway conditions but it was reasonable to conclude that levels of traffic would increase during peak hours. The crux of the matter for the Council and in regard to this main issue was that the lack of information regarding visibility for the accesses. The evidence before me shows an improved shared access for Plot 1 and the existing dwelling, Ashcroft and the formalisation and widening of the access on to the Class III highway.
24. The A4117 is fairly busy road, the access for Plot 1 would be out on to a road with a slight bend in it with no on street parking. Vehicles utilising the proposed access would have good visibility to the west, but visibility to the east would be limited. Nevertheless, the access for Plot 1 is existing and the net increase in use of the access by a single dwelling would not have a harmful impact on highway safety.
25. The Class III highway is a single-track road which provides access to several dwellings and farms. The road is lightly trafficked, and the proposed access would have good visibility towards to the north and to the south.
26. I have had regard to the Council's Highways Officer who, in principle have no objection to the proposed development, but requested further information regarding visibility. I note that the Council do not consider that the splays have been measured correctly, however the submission details the appellants land ownership which appears to be sufficient to provide adequate visibility for the prevailing traffic conditions.
27. Accordingly, I find no conflict with CS Policy CS which seeks, amongst other things, to ensure that developments are designed to be safe and accessible. It would also comply with paragraph 111 of the Framework which seeks to ensure that development does not have an unacceptable impact on highway safety.

### **Other Matters**

28. The appellant also sets out that there is an undersupply of self-build plots. I have not been provided with any evidence regarding this. Even if this were to

be the case, and for the reasons I have set out, the establishment of what would only be a single self-build plot would be set against the principle of development which, as I have said, would attract substantial weight. Additionally, such proposals would need to be secured via a planning obligation and one has not been submitted as part of the appeal for consideration. As such, I have no mechanism to secure the proposed dwelling as self-build and can only afford this limited weight.

29. I have been provided with a number of appeal decisions from both parties, however I do not have the full details of each example. I note however that the specific circumstances of the examples are not directly comparable to the appeal before me, as such I can only give them limited weight. Nevertheless, I have dealt with the appeal on its own merits.

### **Conditions**

30. The Council has provided a list of conditions, which I have assessed in regard to the advice provided in the Planning Practice Guidance (PPG). The conditions requiring the submission of materials is necessary in order to protect the character and appearance of the area. Landscaping, lighting and biodiversity conditions are necessary in order to ensure the proposed landscaping and biodiversity mitigation is completed and maintained. Conditions regarding vehicular access and parking are necessary in order to ensure a safe access. The conditions relating to mine gas risk assessment is necessary in order to protect the future and neighbouring occupants. I have altered the wording of some conditions in order to ensure they comply with the PPG.

### **Conclusion**

31. For the reasons given above I conclude that the appeal should be allowed insofar as it relates to the construction of a dwelling at Plot 1, but dismissed insofar as it relates to the construction of a dwelling at Plot 2.

*Tamsin Law*

INSPECTOR

### **Schedule of Conditions**

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

2. The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan, DRG No 1551/1D., DRG No 1551/2A., DRG No 1551/4., DRG No 1551/5.

3. Prior to the above ground works commencing on the development hereby permitted 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.

4. The development hereby permitted shall not commence until there has been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping, which shall include:

- Positions of all existing trees and hedgerows on the site and along its boundaries
- Identification and measures for the protection of existing trees and hedgerows which are to be retained
- Details/schedules of proposed planting
- Full details of the alignment, height and construction of any walls, fences, retaining structures or other boundary treatments/means of enclosure \*
- Details/samples of hard surfacing materials
- Timetables for implementation

The landscaping works shall be completed in accordance with the approved details. All fences, walls, hardstanding's and other hard landscaping features shall be retained in accordance with the approved details for the lifetime of the development, whilst any trees or plants which, within a period of five years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

5. No development hereby permitted shall commence until there has been submitted to and approved in writing by the Local Planning Authority a mine gas risk assessment. This assessment should be undertaken to assess the potential for mine gases to exist on the site and should be undertaken by a competent person as defined in the National Planning Policy Framework and conducted in accordance with CL:AIRE - Good Practice for Risk Assessment for Coal Mine Gas Emissions; October 2021 and having regard to current Environment Agency guidance Land Contamination: Risk Management (LCRM; 2020).

In the event of the mine gas risk assessment finding the site to be affected by mine gases a further report detailing a Remediation Strategy shall be submitted to and approved in writing by the Local Planning Authority. The Remediation Strategy must be in accordance with BS8485:2015+A1:2019 Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings and 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.



The works detailed as being necessary to make safe the mine gases shall be carried out in accordance with the approved Remediation Strategy. In the event that further contamination from mine gases is found at any time when carrying out the approved development that was not previously identified in the previously submitted and approved Mine Gas Risk Assessment Report, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of the Environment Agency guidance Land Contamination: Risk Management (LCRM; 2020), which is subject to the approval in writing by the Local Planning Authority.

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 risks from mine gases and any contamination identified has been made safe, and 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. Verification must be in accordance with BS8485:2015+A1:2019 Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings and, CIRIA C735 Good Practice on the testing and verification of protection systems for buildings against hazardous ground gases, 2014.

6. Prior to the commencement of the development hereby permitted on site details of the means of access, including the location, layout, construction and sightlines, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented before the use hereby permitted is commenced or the dwelling occupied (whichever is the sooner).

7. Prior to the first use or occupation of any part of the development hereby permitted, artificial roosting opportunities for bats and nesting opportunities for wild birds shall be provided at the site in accordance with precise details which shall first be submitted to and approved in writing by the Local Planning Authority. This provision shall include:

- A minimum of 2 external Woodcrete bat box or integrated bat 'brick' suitable for nursery or summer roosting by small crevice-dwelling UK bat species
- A minimum of 4 artificial 'nests' of either integrated brick design or external box design, suitable for Swifts (Swift bricks or boxes with entrance holes no larger than 65 x 28 mm can accommodate a wide range of species (CIEEM, 2019)), Starlings (42mm hole, starling specific), Sparrows (32mm hole, terrace design) and/or House Martins (House Martin nesting cups) shall be erected on the site prior to first use of the development. The boxes shall be sited in suitable locations and at suitable heights from the ground, with a clear flight path and where they will be unaffected by artificial lighting. The boxes shall therefore be maintained for the lifetime of the development.

8. The development hereby permitted shall not be brought into use until the areas shown on the approved plans for parking and turning of vehicles has been provided properly laid out, hard surfaced and drained. The space shall be maintained thereafter free of any impediment to its designated use for the lifetime of the development.

9. Any gates provided to close the proposed access shall be set a minimum distance of 5 metres from the carriageway edge and shall be made to open inwards only.

10. 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, trees, and hedgerows. The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust's Guidance Note 08/18 Bats and artificial lighting in the UK. The development shall be carried out strictly in accordance with the approved details and thereafter retained for the lifetime of the development.