



# Appeal Decision

Site visit made on 3 January 2024

**by Hannah Ellison BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 07 February 2024**

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**Appeal Ref: APP/L3245/W/23/3317669**

**Old National Boys School, Station Street, Bishop's Castle SY9 5DD**

- 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 RDS Kent Limited against the decision of Shropshire Council.
  - The application Ref 22/02676/FUL, dated 8 June 2022, was refused by notice dated 5 January 2023.
  - The development proposed is the conversion of Old National Boys School to a single dwelling with garden courtyard and off-street parking.
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## Decision

1. The appeal is dismissed.

## Preliminary Matter

2. The Government published on 19 December 2023 a revised version of the National Planning Policy Framework (the Framework). Whilst this made certain revisions to aspects of national planning policy, the provisions in respect of the main issues in this case are largely unchanged. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework from the parties, and that no party would be disadvantaged by such a course of action.

## Main Issues

3. The main issues are:
  - whether the proposed foul drainage would achieve sustainable water management; and
  - the effect of the proposal on the living conditions of occupiers at the proposed dwelling and adjacent properties, with particular regard to odour.

## Reasons

4. This appeal concerns the conversion of a former school building, since used as a carpentry workshop, into a two-bedroom dwelling. The site is located in a predominantly residential area close to the centre of Bishop's Castle.
5. The appeal site falls within the catchment area for the River Clun Special Area of Conservation (SAC). The Council confirm that the River Clun SAC is designated because of its population of rare freshwater pearl mussels. Its condition is currently unfavourable, largely due to excess nutrients and sedimentation. In particular, additional phosphate entering the river is likely to further worsen its water quality, and a major source of phosphate is treated wastewater from residential properties. I shall return to this matter later.

### *Foul drainage*

6. It is proposed that the foul waste of the appeal development would be stored in a sealed cesspool within the site. When required, the effluent would then be transported by road for treatment and disposal outside of the SAC catchment area.
7. The Planning Practice Guidance (PPG) makes it clear that when drawing up wastewater treatment proposals for any development, the first presumption is to provide a system of foul drainage discharging into a public sewer to be treated at a public sewage treatment works. The PPG goes on to state that where a connection to a public sewage treatment plant is not feasible (in terms of cost and/or practicality) a package sewage treatment plant can be considered.
8. The guidance in the PPG stems from the building regulations on drainage and waste disposal<sup>1</sup> which sets out a hierarchy of foul water drainage. It notes that, in order of priority, the use of cesspools is the least favoured option, where connection to a public sewer, a private sewer or a septic tank or another wastewater treatment system is not reasonably practicable, in that order.
9. This is further reflected in guidance set out by the Environment Agency, which notes that other than in very exceptional circumstances, the use of non-mains drainage will not be allowed unless it can be proven that a connection to the public sewer is not feasible.
10. I acknowledge that the drainage hierarchy does not preclude the use of cesspools. However, it is clear that their use is a last resort and should only be considered where connection to main drainage is not practicable or where no other option is feasible.
11. Given the small size of the appeal site, a cesspool has been proposed rather than a sewage treatment plant. However, it is confirmed that the appeal building is currently connected to the public sewer, thus a mains connection is clearly feasible and practicable in this location. Accordingly, the proposed use of a cesspool in this case is the least sustainable option for sewage disposal and could be avoided.
12. Leading on from this, Natural England advice for development proposals with the potential to affect water quality resulting in adverse nutrient impacts on habitats sites, dated March 2022, makes clear that developments should be connected to the public foul sewer network wherever this is reasonable. This includes areas, such as the appeal site, where the Habitats Regulations apply and any need to reduce nutrient inputs in those areas should not lead to the installation of non-mains foul drainage systems in circumstances where connection to the public foul sewer would otherwise be considered reasonable. Any plan or project then connecting to mains would still need to also be compliant with Habitat Regulations.
13. Setting aside the foul drainage hierarchy, the appellant has nevertheless gone on to suggest that the proposal would pass a Habitat Regulations Assessment, as required for any plans or projects potentially affecting a European site with regard to that site's conservation objectives.

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<sup>1</sup> The Building Regulations 2010

14. In particular, the appellant asserts that the use of a cesspool would result in a lesser load on the River Clun SAC as the proposal's effluent would be stored then disposed of outside of the catchment area. Thus, it is suggested that the proposed development would be a betterment to the condition of the SAC, or at least nutrient neutral.
15. However, I cannot be certain that future occupiers would ensure the effluent is treated at a wastewater treatment works outside of the SAC. There is no mechanism before me to secure this and none which I am aware that I could attach.
16. Additionally, the appellant intimates that, even if the proposal would be connected to the public sewer, the development would be at least nutrient neutral in comparison to the fallback/former use of the building as a workshop. This is based on the estimated water consumption figures for 6 employees versus the maximum of 3 future occupiers of the proposed development.
17. I acknowledge that the appeal site lies towards the edge of the catchment area of the SAC and thus it may be possible that employees of the former use of the appeal building resided outside of the area, therefore resulting in the former use generating extra wastewater and consequential nutrient loading on the SAC. However, this is not guaranteed, and I consider that given the size of Bishop's Castle it is likely that a considerable number of the total employees could have resided there.
18. Furthermore, it has not been convincingly demonstrated that the proposed dwelling would generate wastewater at the lower end of the range provided by the appellant. Nor am I persuaded that the former use would have generated the high levels as suggested by the appellant, given the restricted nature of the appeal site and type of activities likely undertaken.
19. I therefore consider that the proposal may result in a net increase in population served by a wastewater system and thus I am not convinced that nutrient neutrality, as a minimum, would be achieved, should the proposal be connected to the public sewer.
20. Notwithstanding the above, the development before me seeks permission for the installation of a cesspool as a means of foul drainage, rather than connection to the public sewer. As the use of a cesspool is unacceptable on its own merits in isolation from the concerns regarding the SAC, for the reasons given above and as will follow on below, there is no need for me as the competent authority to carry out an Appropriate Assessment and then go on to consider the suitability of the proposed cesspool as a mitigation measure, whether it be permanent or temporary.
21. It has been suggested that no circumstances have changed since planning permission was previously granted for residential development at the appeal site<sup>2</sup>, however that permission dates to 2013 when the effect on nutrient levels within the SAC was not a concern.
22. Whilst there may be examples of developments having been granted permission with the inclusion of a cesspool as a means of foul drainage, each proposal is determined on its own merits, taking into consideration matters

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<sup>2</sup> Council ref: 12/04500/FUL

such as the surrounding context and the implementation of the drainage hierarchy.

23. Taking all the above into consideration, the development would fail to achieve sustainable water management and thus would conflict with policies CS6 and CS18 of the Shropshire Local Development Framework: Adopted Core Strategy (March 2011) and Policy MD2 of the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan (December 2015). Together with paragraph 180 of the Framework, these policies aim for developments which integrate measures for sustainable water management to avoid an adverse impact on water quality and prevent unacceptable levels of water pollution.

#### *Living conditions*

24. I note the appellants comments in relation to the practicalities and frequency of emptying the cesspool. However, the Council's concerns appear to be in relation to the potential for odours from the storage and emptying of untreated effluent in the cesspool.
25. Given the constrained nature of the appeal site, the cesspool would be within very close proximity to habitable rooms of the appeal proposal and the adjacent dwelling. As such, I am concerned that any leakage, overflow or other such discharge from the cesspool or during emptying, or any resulting from its ventilation, would result in odour egress which would be readily detectable for those living within such close proximity.
26. Therefore, the proposal would harm the living conditions of occupiers. My attention has not been drawn to any development plan policies in respect of this main issue thus I have relied upon the Framework. This proposal would conflict with paragraph 135 which aims to ensure developments have a high standard of amenity for existing and future users.

#### **Other Matter**

27. The appeal building is a non-designated heritage asset within Bishop's Castle Conservation Area. The Council has raised no issues in respect of these heritage assets. As I am dismissing for other reasons there is no need for me to consider these matters further.

#### **Balance and Conclusion**

28. The appeal proposal would see the reuse of a heritage asset which appears to have been neglected for some time. This is a clear benefit of the proposal. The development would also result in an additional dwelling which would make a contribution to local housing stock. It would be within close proximity to shops and services within Bishop's Castle and also to public transport connections to larger settlements. Economic benefits would arise during construction and on subsequent occupation. Given the small scale of the proposed development, I collectively afford these benefits no more than moderate weight.
29. The proposal would conflict with the development plan and there are no other considerations which indicate that a decision should be made other than in accordance with it. Therefore, the appeal should be dismissed.

*H Ellison*  
INSPECTOR