



Shropshire Council
Legal and Democratic Services
Shirehall
Abbey Foregate
Shrewsbury
SY2 6ND

Date: Monday, 15 February 2016

Committee: North Planning Committee

Date: Tuesday, 23 February 2016

Time: 2.00 pm

Venue: Shrewsbury/Oswestry Room, Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND

You are requested to attend the above meeting.
The Agenda is attached

Claire Porter
Head of Legal and Democratic Services (Monitoring Officer)

Members of the Committee

Arthur Walpole (Chairman)
Paul Wynn (Vice Chairman)
Joyce Barrow
John Cadwallader
Gerald Dakin
Steve Davenport
Pauline Dee
Roger Hughes
Vince Hunt
David Lloyd
Peggy Mullock

Substitute Members of the Committee

Nicholas Bardsley
Karen Calder
Steve Charmley
Peter Cherrington
Andrew Davies
Ann Hartley
Simon Jones
Brian Williams
Thomas Biggins
Vacancy

Your Committee Officer is:

Shelley Davies Committee Officer

Tel: 01743 257718

Email: shelley.davies@shropshire.gov.uk

AGENDA

1 Apologies for Absence

To receive apologies for absence.

2 Minutes

To confirm the Minutes of the meeting of the North Planning Committee held on 26th January 2016, attached, marked 2. (Minutes to Follow)

Contact: Emily Marshall on 01743 257717

3 Public Question Time

To receive any questions, statements or petitions from the public, notice of which has been given in accordance with Procedure Rule 14.

4 Disclosable Pecuniary Interests

Members are reminded that they must not participate in the discussion or voting on any matter in which they have a Disclosable Pecuniary Interest and should leave the room prior to the commencement of the debate.

5 Castleton, Cemetery Road, Market Drayton, Shropshire, TF9 3BG (15/05463/VAR) (Pages 1 - 8)

Removal of Condition No. 3 attached to Planning Permission NS/03/00825/FUL dated 9 October 2003 to allow the annex to be occupied by a third party as an independent dwelling.

6 The Hollies, Dovaston, Kinnerley, Oswestry, Shropshire (12/03866/FUL) (Pages 9 - 20)

Reposition previously approved replacement dwelling (previous ref 06/14437/FUL)

7 Gobowen Methodist Chapel, Chirk Road, Gobowen, Oswestry, Shropshire (15/05302/FUL) (Pages 21 - 30)

Conversion of school room adjoining former chapel to one dwelling.

8 Gobowen Methodist Chapel, Chirk Road, Gobowen, Oswestry, Shropshire (15/05303/FUL) (Pages 31 - 38)

Conversion of former chapel to one dwelling

9 Appeals and Appeal Decisions (Pages 39 - 64)

10 Date of the Next Meeting

To note that the next meeting of the North Planning Committee will be held at 2.00 pm on Tuesday 22nd March 2016, in the Shrewsbury Room, Shirehall, Shrewsbury.



Committee and Date

North Planning Committee

23rd February 2016

Item

5

Public

Development Management Report

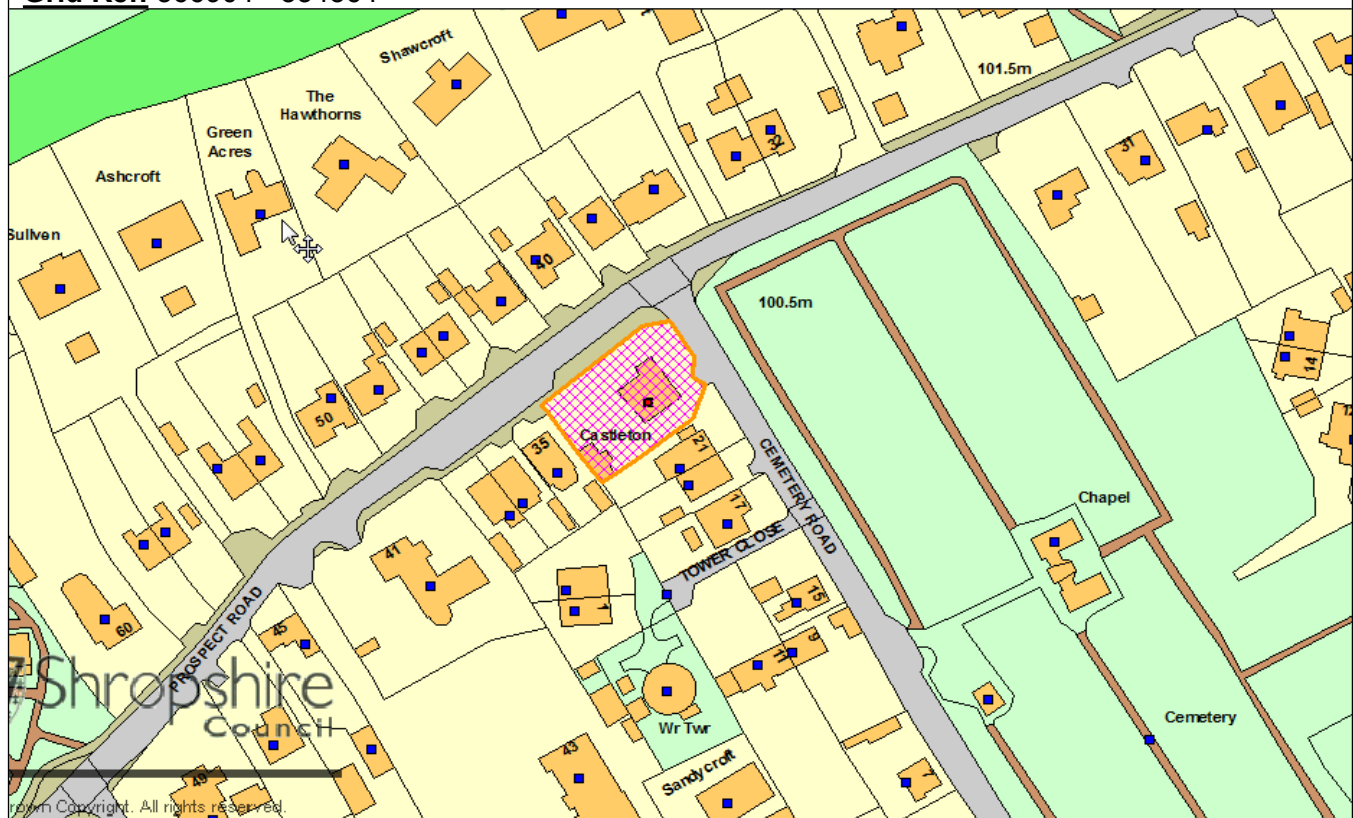
Responsible Officer: Tim Rogers

Email: tim.rogers@shropshire.gov.uk Tel: 01743 258773 Fax: 01743 252619

Summary of Application

<u>Application Number:</u> 15/05463/VAR	<u>Parish:</u>	Market Drayton Town
<u>Proposal:</u> Removal of Condition No. 3 attached to Planning Permission NS/03/00825/FUL dated 9 October 2003 to allow the annex to be occupied by a third party as an independent dwelling		
<u>Site Address:</u> Castleton Cemetery Road Market Drayton Shropshire TF9 3BG		
<u>Applicant:</u> Mr Kevan Rudd		
<u>Case Officer:</u> Alison Groom	<u>email:</u> planningdmne@shropshire.gov.uk	

Grid Ref: 366904 - 334364



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Recommendation:- Refuse.

Recommended Reason for refusal

1. It is considered that the proposed site is inappropriate for an independent unit of accommodation in addition to the main dwelling and such development would be detrimental to the amenities of all concerned, therefore the removal of the condition does not comply with the relevant policies quoted above from the Shropshire Core Strategy, the SAMDev Plan and the NPPF, and permission is therefore recommended for refusal.

REPORT**1.0 THE PROPOSAL**

- 1.1 The application seeks planning approval for the removal of Condition No. 3 attached to Planning Permission NS/03/00825/FUL dated 9 October 2003 to allow the annex to be occupied by a third party as an independent dwelling
- 1.2 Original approval: NS/03/00825/FUL, conversion of existing barn to provide ancillary residential accommodation to Castleton including raising of the roof to form first floor bedroom – Approved 09.10.2003.
- 1.3 Condition 3 “As the site is inappropriate for an independent unit of accommodation in addition to the main dwelling and such development would be detrimental to the amenities of all concerned, the proposed additional living accommodation for the applicant's family needs shall be occupied and maintained as part of the main dwelling and when the special need for the annexe ceases, it shall be incorporated within the existing dwelling as residential accommodation and shall not be let, sold or otherwise disposed of to form a separate dwelling.”

2.0 SITE LOCATION/DESCRIPTION

- 2.1 Castleton is a relatively modern large detached dwellinghouse situated in a corner plot at the junction of Cemetery Road and Prospect Road. The property is located within a residential area of Market Drayton. The site, Castleton, is currently bordered by small garden wall along Cemetery Road and hedges along Prospect Road (North and East). To the neighbouring properties there are hedges and wooden fencing (South and West).
- 2.2 To the rear of the main dwelling house within the sites curtilage is the residential annex to which this application relates, the annexe building extends to 53.85 sqm across a single floor plus a mezzanine floor. The character of which compliments the adjacent dwelling. Internally the property comprises a bathroom, kitchen/ living space and 1No. Double bedroom located on the mezzanine floor.

3.0 REASON FOR DELEGATED DETERMINATION OF APPLICATION

- 3.1 Officers recommendation for refusal is contrary to the Parish Council's views to support the scheme. In consultation with the Chair of the Planning Committee it is considered that the proposal raises issues that warrant consideration by the committee members.

4.0 Community Representations**4.1 Consultee Comments****4.1.1 SC Affordable Housing**

The affordable housing contribution proforma accompanying the application indicates the correct level of contribution and/or on site affordable housing provision and therefore

satisfies the provisions of the SPD Type and Affordability of Housing.

Any other conditions attached to the original application needs to be provided for in any new decision and if there was a S106 Agreement a variation to this will be required, if not a new S106 will be required and payment will be due on signature.

4.2 Public Comments

4.2.1 Parish Council

To raise no objection to this application.

5.0 THE MAIN ISSUES

- Principle of development
- Impact to the residential amenity
- Affordable Housing

6.0 OFFICER APPRAISAL

6.1 Principle of development

6.1.1 Policy CS3: The Market Towns and Other Key Centres of the Shropshire Core Strategy ensures that the Market Towns and other Key Centres will maintain and enhance their roles in providing facilities and services to their rural hinterlands, and providing foci for economic development and regeneration. Balanced housing and employment development, of an appropriate scale and design that respects each town's distinctive character and is supported by improvements in infrastructure, will take place within the towns' development boundaries and on sites allocated for development.

6.1.2 Following the submission of the SAMDev Plan to the Secretary of State at the end of July 2014, the Council's position is that it has identified sufficient land that will address the NPPF 5 year housing land supply requirements. The SAMDev Plan is now formally adopted by Shropshire Council as of the 17th December 2015. Therefore it is considered that full weight can now be given to the proposed policies within it.

6.1.3 Market Drayton has been identified within the SAMDev as a 'Market Town', thus providing a detailed map showing the development boundary and detailed policy setting out development guidelines for the town and identifying the allocated sites. Policy CS11 indicates that Market Drayton will provide new housing development through the allocation of greenfield sites together with a windfall allowance which reflects opportunities within the town's development boundary. The development site is within the development boundary as such is considered acceptable in relation to policy guidelines.

6.1.4 Policy MD3 : Delivery of Housing Development of the SAMDev Plan states that in addition to supporting the development of the allocated housing sites set out in Settlement Policies S1-S18, planning permission will also be granted for other sustainable housing development having regard to the policies of the Local Plan, particularly Policies CS2, CS3, CS4, CS5, MD1 and MD7a.

6.1.5 Paragraph 50 of the NPPF states: "To deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, local planning authorities should:

plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes)

6.1.6 Policy S11 of the SAMDev for the Market Drayton has outlined the need for infill development, as they have allowed the provision of 1200 houses with only 400 on allocated sites. Subsequently, the site falls within the towns development boundary, and the annex is within the residential curtilage of Castleton and can be considered suitable infill development.

6.1.7 The site is located within the development boundary of Market Drayton and is close to many local amenities such as shops, schools, places of employment etc. Market Drayton provides a range of employment opportunities in the area and is well connected to the A41 and A53 allowing easy access to Telford, Wolverhampton, Shrewsbury and parts of Staffordshire such as Newcastle under Lyme.

6.2 Impact to the residential amenity

6.2.1 Policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy indicates that development should safeguard the residential and local amenity

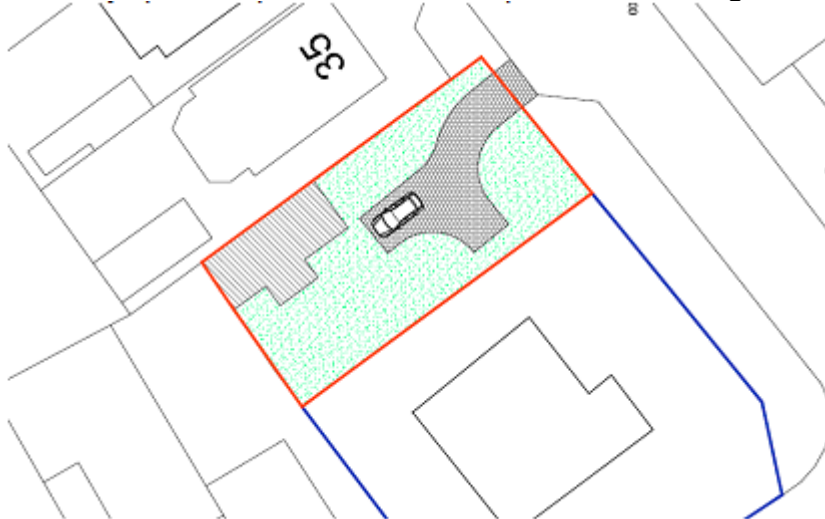
6.2.2 Policy MD2: Sustainable Design of the SAMDev Plan supports policy CS6 for a development proposal to be considered acceptable it is required to: contribute to and respect locally distinctive or valued character and existing amenity value by:

- 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.

6.2.3 There are no physical or structural changes to be made to the residential annex, the site currently benefits from two accesses, therefore if approved the annex would have its own self serving access from Prospect Road and the main dwelling house Castleton will be accessed via Cemetery Road. The installation of a new boarded fence will be installed between the two dwellings.

6.2.4 As the annex already exists and there are no changes to be made to the building no additional visual impact to the surrounding properties will be caused.

6.2.5 The site will be sub-divided as illustrated in the image below,.



6.2.6 As the property is a modest one bed property it is likely that the residents will be a young person / couple starting out on the housing ladder, rather than that of a larger family, due to the size of the annex it is felt that impact caused by additional traffic will be minimal and the existing access and parking provision on the site will be sufficient.

6.2.7 It is officers opinion that the sub-division of the annex from the main dwelling house will result in amenity concerns for both properties, the existing dwellinghouse is a large property and the site will become over developed in relation to its surrounding amenity land. The conservatory since added to Castleton's side elevation opens out to the rear garden area, this area of garden will be substantially reduced and will become impracticable amenity area for the enjoyment of the occupiers, furthermore the first floor window openings will look directly over the proposed garden area for the open market dwelling causing a considerable amount of overlooking and resulting in the loss of privacy.

6.2.8 In 2003 the condition was applied to the approval of the annex restricting the accommodation, this was done because the site is inappropriate for an independent unit of accommodation in addition to the main dwelling and such development would be detrimental to the amenities of all concerned. No alteration have been made to the site layout and this still remains the case to the present day and therefore if and when the special need for the annexe ceases, it shall be incorporated within the existing dwelling as residential accommodation and shall not be let, sold or otherwise disposed of to form a separate dwelling.

6.3 Affordable Housing

6.3.1 Shropshire Core Strategy Policy CS11: 'Type and Affordability of Housing' states that to meet the diverse housing needs of Shropshire's residents now and in the future and to create mixed, balances and inclusive communities, an integrated and balanced approach will be taken with regard to existing and new housing; including type, size, tenure and affordability. The application is subject to an affordable housing contribution, as such, should any permission be granted a S106 Agreement would be required securing the correct contribution to be determined by the prevailing percentage target rate at the date of a full or reserved matters application.

6.3.2 The affordable housing contribution proforma accompanying the application indicates the

correct level of contribution and/or on site affordable housing provision and therefore satisfies the provisions of the SPD Type and Affordability of Housing. Any other conditions attached to the original application needs to be provided for in any new decision, a section 106 Agreement is not attached to the 2003 approval therefore Section 106 Agreement will be required and payment will be due on signature.

7.0 CONCLUSION

It is considered that the proposed site is inappropriate for an independent unit of accommodation in addition to the main dwelling and such development would be detrimental to the amenities of all concerned, therefore the removal of the condition does not comply with the relevant policies quoted above from the Shropshire Core Strategy, the SAMDev Plan and the NPPF, and permission is therefore recommended for refusal.

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:

West Midlands Regional Spatial Strategy Policies:

NPPF

Core Strategy and Saved Policies:

Policy CS6: Sustainable Design and Development Principles

SAMDev Plan:

MD2: Sustainable Design

RELEVANT PLANNING HISTORY:

- NS/81/00982/FUL Erection of extension to existing dwelling to form dining room with bedroom over. Approved 11th January 1982
- NS/02/00045/FUL Erection of a single storey extension to rear elevation of existing dwelling to provide kitchen, utility, WC and study Approved - 5th March 2002
- NS/03/00825/FUL Conversion of existing barn to provide ancillary residential accommodation to Castleton including raising of roof to form first floor bedroom. Approved - 9th October 2003
- NS/04/00177/FUL Erection of a detached private garage – Approved - 17th March 2004
- NS/04/00819/FUL Resubmission of planning permission N/03/784/MD/1167 for conversion of barn to provide residential accommodation to Castleton to include additional patio doors and window. Approved - 22nd September 2004
- NS/09/01212/FUL Conservatory. Approved - 10th August 2009

11. Additional Information

View details online:

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
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Cabinet Member (Portfolio Holder) Cllr M. Price
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Local Member Cllr Roger Hughes Cllr David Minnery

Appendices

APPENDIX 1 - Conditions



Committee and Date

North Planning Committee

23rd February 2016

Item

6

Public

Development Management Report

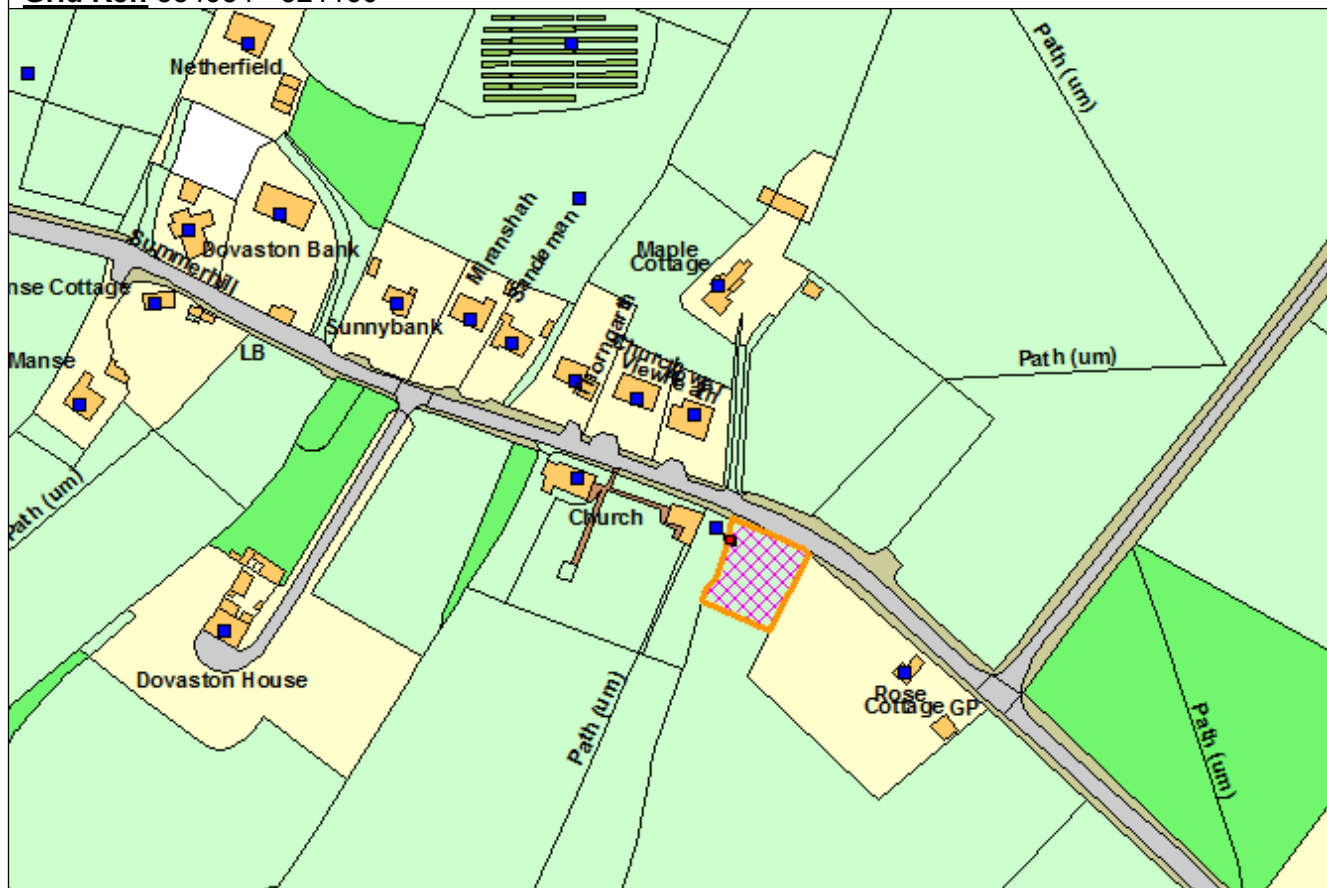
Responsible Officer: Tim Rogers

Email: tim.rogers@shropshire.gov.uk Tel: 01743 258773 Fax: 01743 252619

Summary of Application

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

Grid Ref: 334954 - 321160



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

REPORT

1.0 THE PROPOSAL

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

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

2.0 SITE LOCATION & DESCRIPTION

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

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

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

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

4.0 REPRESENTATIONS

4.1 Consultee Comments

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

Comment submitted date: Fri 05 Oct 2012

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

subject to Shropshire Council's Core Strategy Policy CS5.

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

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

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

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

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

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

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

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

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

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

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

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

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

4.2 **Public Comments**

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

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

5.0 **THE MAIN ISSUES**

- Principle of development
- Siting, scale and design

- Potential for future development

6.0 OFFICER APPRAISAL

6.1 Principle of development

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

afforded no weight in the consideration of this current proposal.

- 6.1.8 With regard to the KPNP and Design Statement, although material considerations, neither of these documents are part of the development plan and therefore should not be given greater weight than the Core Strategy or the SAMDev. Both documents predate the NPPF and the SAMDev. The Design Statement notes that the application site is proposed to be rebuilt and provides detailed advice on development in the area. The KPNP provides the Parish views on the future development and growth of the area. Neither document deal specifically with the issue of replacement dwellings and therefore the advice regarding new dwellings is not relevant to the current proposal.
- 6.1.9 Having identified the relevant policies and supplementary documents (as set out above) there is a general presumption in favour of allowing replacement dwellings. The site has a long-standing residential use and it is appropriate for a dwelling to be rebuilt in some form on this parcel of land. Therefore the development is acceptable in principle. It is the detail that is causing the main areas of concern within the local community; this shall be explored in the next section of the report.

6.2 Siting, scale and design

- 6.2.1 In terms of scale and design the house-type now being proposed is identical to that approved under reference no. OS/06/14437/FUL; this being the case it would be difficult to defend a refusal on the grounds of either inappropriate scale or design; both these elements of this submission have already been considered and approved within OS/06/14437/FUL.
- 6.2.2 Furthermore, given that the proposed dwelling is the same size as that which originally occupied the site, concerns raised by third parties regarding that it would be contrary to the aims and ambitions of the Neighbourhood plan which seeks to provide smaller units cannot be afforded any weight. The issue of potential for future development is considered in the following section of this report.
- 6.2.3 This now leaves only siting as the remaining issue and whether or not the repositioning of the proposed dwelling to the centre of the site would be so detrimental to the character of the locality as to warrant a refusal.
- 6.2.4 The site is afforded no special protection, that is to say is it not within a designated conservation area, nor is it within the Shropshire Hills Area of Outstanding Natural Beauty. Nonetheless, the policy frameworks requires all new development to have regard to local distinctiveness. The rise in the acknowledged importance of local distinctiveness has come about as a direct reaction to the homogenising effect of the large-scale house builders who have a tendency to build ‘anywhere-housing’ that are the same format the length and breadth of the country; the plans are off-the-peg. Consequently, towns, villages and rural areas are perceived as increasingly similar in appearance. By focusing on what is different from one area to another and reinforcing those differences the local character and the local distinctiveness can be retained.
- 6.2.5 Some of the main determining factors that establish a sense of local distinctiveness are identified in the Kinnerley Parish’s Design Statement and Landscape Character Assessment. In terms of the area identified as 2.2.2 (which this site adjoins) the

statement referring to house-styles reads:

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

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

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

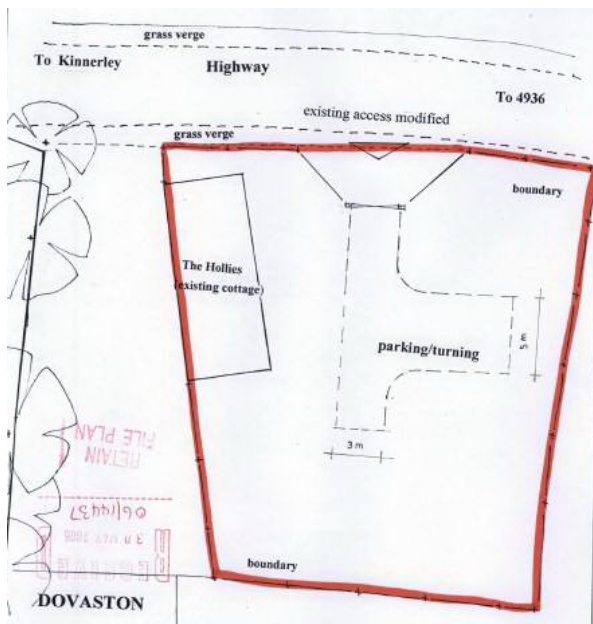
Individual smallholdings and crofts at intervals along the roads. These small sandstone cottages remain a feature of this landscape.

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

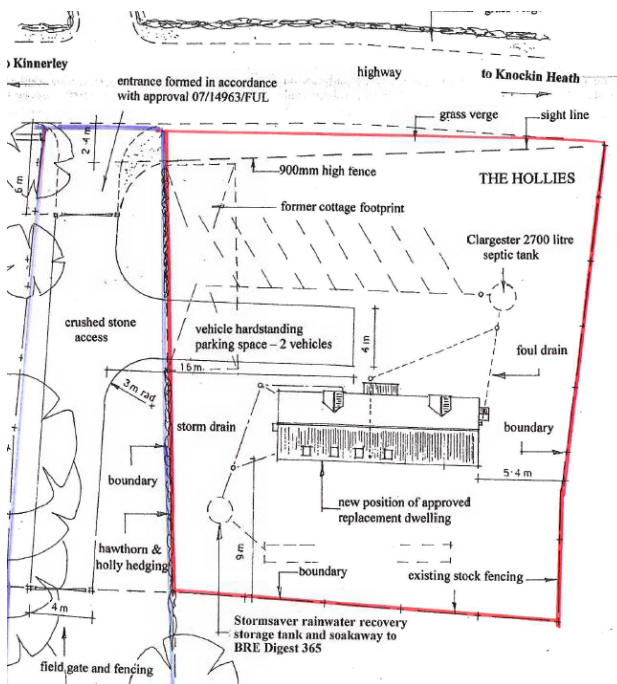
6.2.8 By way of justifying the resiting the applicant has offered the following information:

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

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



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



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

6.3 Potential for future development

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

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

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

7.0 CONCLUSION

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

8.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL

8.1 Risk Management

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

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

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

8.2 Human Rights

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

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

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

8.3 Equalities

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

9.0 FINANCIAL IMPLICATIONS

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

10.0 BACKGROUND

Relevant Planning Policies

Central Government Guidance:

NPPF
NPPG

Core Strategy Policies:

Policy CS5: Countryside and Green Belt

Policy CS6: Sustainable Design and Development Principles

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

MD2: Sustainable Design

MD7: Managing Development in the Countryside

Relevant planning history:

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

11.0 ADDITIONAL INFORMATION

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

APPENDIX 1**Conditions****STANDARD CONDITION(S)**

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

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

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

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

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

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

CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

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

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

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

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

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

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

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



Committee and Date
 North Planning Committee
 23rd February 2016

Item
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 Public

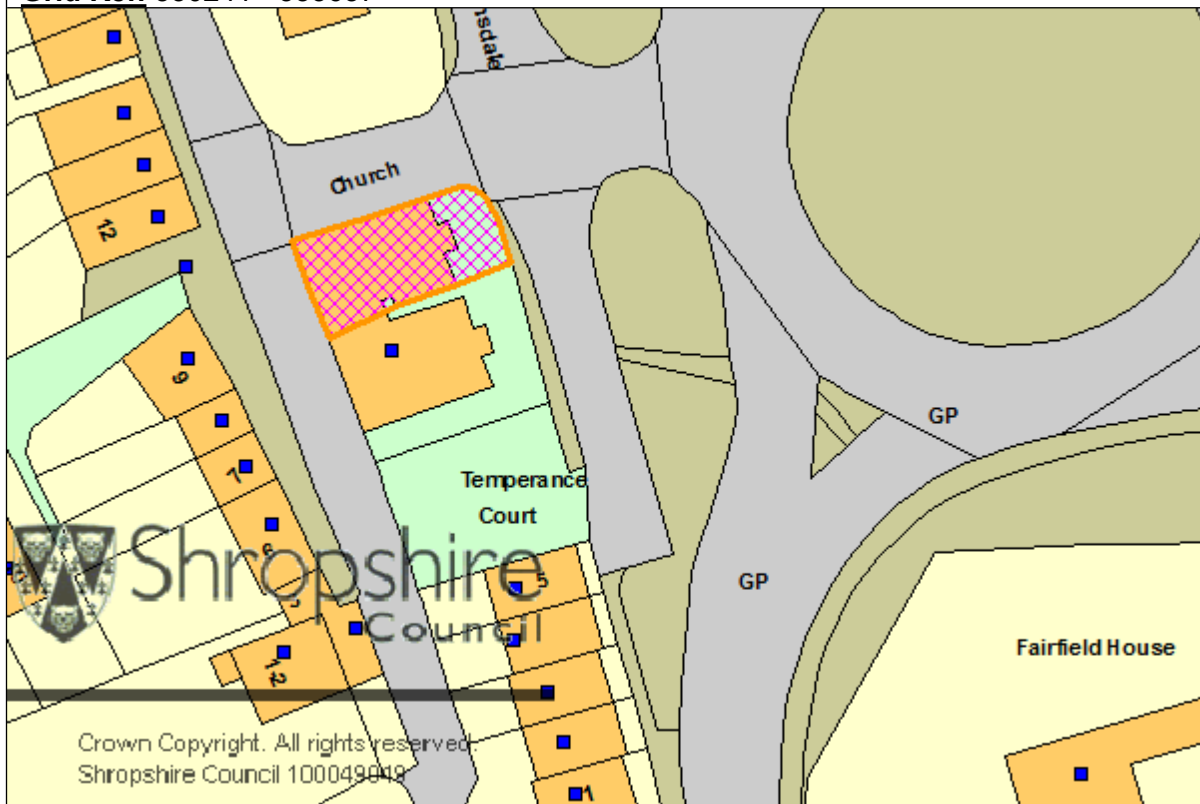
Development Management Report

Responsible Officer: Tim Rogers
 Email: tim.rogers@shropshire.gov.uk Tel: 01743 258773 Fax: 01743 252619

Summary of Application

Application Number: 15/05302/FUL	Parish: Selattyn And Gobowen
Proposal: Conversion of school room adjoining former chapel to one dwelling	
Site Address: Gobowen Methodist Chapel Chirk Road Gobowen Oswestry Shropshire	
Applicant: Mr & Mrs E Roberts	
Case Officer: Mark Perry	email: planningdmnw@shropshire.gov.uk

Grid Ref: 330241 - 333637



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Recommendation:- Grant Permission subject to the conditions set out in Appendix 1 and the applicant entering into a S106

REPORT

1.0 THE PROPOSAL

- 1.1 This application is for the conversion of the former school room to one dwelling. This is one of two applications for the site. The site has 2 buildings comprising the main Chapel and the adjoining School Room. The conversion of the Chapel to a dwelling is being considered under a separate application numbered 15/05303/FUL.
- 1.2 Some works to the building have already been carried out which has involved the erection of scaffolding which has raised concerns with local residents. However as the building is not a listed structure, the works that have been done do not require planning permission. The issue of the scaffolding is an issue for highways rather than a planning matter.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 The building is located within Gobowen fronting onto a section of no through road which would have originally been the main road prior to the construction of the large roundabout. The no through road provides access to a small communal parking area for the 5 dwellings to the south; on the opposite side of the Chapel building. There are residential properties surrounding the site, terraced properties to the rear which are separated from the site by a narrow road; this a no through road for vehicles but for pedestrian it leads through the village shop. The space around both the School Rooms is limited with the rear and side elevations both hard on the edge of the roads. A small open space is provided to the front which is set behind a low brick wall.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 The Parish Council have objected to the application and raise issues which in the opinion of the Local members and the Chair of the Planning Committee warrant consideration by the Planning Committee.

4.0 COMMUNITY REPRESENTATIONS full details of the responses can be viewed online

4.1 Consultee Comments

- 4.1.1 **Affordable Housing Officer** - The affordable housing contribution proforma accompanying the application indicates the correct level of contribution and/or on site affordable housing provision and therefore satisfies the provisions of the SPD Type and Affordability of Housing.
- 4.1.2 **Drainage** – drainage details, plan and calculations could be conditioned if planning permission were to be granted:

4.1.3 **Highways** – Highway objection could not be sustained.

4.1.6 **Parish Council** – objects

The 'layby' made reference to is not a 'layby' it is an access road to the car park for Temperance Court.

There is no parking in this application.

Removal of the wall would change the look of the building and probably, because of limited space, would result in using part of the pavement as parking. This would cause problems for pedestrians as it used on a daily basis as the route to the shop and primary school.

The roof terrace is a concern;

i) It changes the aesthetics of the building

ii) It overlooks the bedrooms of the cottages behind

iii) Anything dropped or falling off the roof terrace could result in injury or damage of people / vehicles using the road behind the school room

Consider it to be over-development of the site.

Illegal scaffolding - no lights or padding. Raises Health and Safety concerns.

4.1.7 **Conservation-**

No objection to the re-use of a non-designated heritage asset to secure the long term conservation of the building.

4.2 **Public Comments**

4.2.1 No representations received at time of writing report.

5.0 THE MAIN ISSUES

Policy & Principle of Development

Design, Scale and Character

Impact on Residential Amenity

Highways

Drainage

6.0 OFFICER APPRAISAL

6.1 **Policy & Principle of Development**

6.1.1 Gobowen is a Community Hub, therefore Core Strategy Policy CS4 (Community Hubs and Clusters) is relevant, and this states that development in such areas which helps to rebalance rural communities by providing facilities, economic development or housing for local needs, and is of a scale that is appropriate to the settlement, will be allowed. It also seeks to ensure that such development is of a scale and design that is sympathetic to the character of the settlement and its environs.

6.1.2 CS4 also states that sensitively designed development that reflects the needs of the local community, and contributes towards much needed infrastructure and affordable homes for local people, has an important role to play in reinvigorating rural communities, and in reducing carbon emissions by maintaining local services and reducing the need to travel.

6.1.3 Within SAMDev policy S14.2(i) Gobowen is a Community Hub with a housing

guideline of around 200 additional dwellings over the period to 2026, to be delivered through the development two specific sites together with development by infilling, groups of houses and conversions on suitable sites within the development boundary identified on the Policies Map.

6.1.4 The building is neither Listed or in a conservation and therefore is not afforded any Statutory protection to prevent it being demolished. However it is considered that the building is an undesignated Heritage Asset and the aim would be to try and ensure its future preservation rather than removing the buildings and replacing it with new build development. Heritage Assets make a valuable contribution towards the character and appearance of an area so where possible putting such buildings into an alternative use is to be encouraged.

6.1.5 Officers consider that with reference to the above policy the proposal for the conversion of the Chapel building which is considered to be a Heritage Asset, into a single dwelling meets the relevant criteria of the above stated policy and is therefore acceptable in principle.

6.2 **Design, Scale and Character**

6.2.1 Policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy requires development to protect and conserve the built environment and be appropriate in scale, density, pattern and design taking into account the local context and character. The development should also safeguard residential and local amenity, ensure sustainable design and construction principles are incorporated within the new development. Policy 7 'Requiring Good Design' of the National Planning Policy Framework indicates that great weight should be given to outstanding or innovative designs which help raise the standard of design more generally in the area.

6.2.2 The applicant is proposing to make very little alterations to the external appearance of the building to retain its unique character and appearance. The original submission included the addition of a larger dormer to the side elevation which would then provide access onto a roof terrace. Following negotiation with the applicant this dormer has now been removed from the scheme which keeps the original form of the building. The ground floor will provide an open plan living, dining, kitchen area some of which would benefit from being a double height space. The plans show that only one bedroom would be provided and this would be on the ground floor. An open mezzanine would be provided to create a first floor. The existing structure has a single storey pitched roof building which provided a link between the Chapel and the School Room. It is proposed that the roof is removed to create a roof terrace which following the submission of the amended plans would be accessed by an open spiral staircase.

6.2.3 The small size of the plot and the comparatively large footprint of the building means that there is very limited amenity space which is why the applicant wanted to make use of the flat roof as a terrace. It has not been realistic to provide any parking within the site. A small space could possibly be created to the front parallel with the road but this would necessitate the removal of the brick wall which would not only reduce the attractiveness of the building would also likely create unfavourable highway conditions as vehicles enter and leave the site because of the restricted visibility.

- 6.2.4 To protect the character of the building for the future a condition will be included on any planning permission granted, removing permitted development rights for alterations and extensions to the building.
- 6.2.5 It is fully acknowledged that the site is constrained in terms of its size and has very limited private amenity and no parking space. This is not ideal and the open space provision is less than would normally be expected for a new dwelling. Accordingly, this does weigh negatively against the proposal. However, weight must also be awarded to the fact that the development will ensure the long term future of a historic building which contributes towards the character of the area. It is considered that the benefits of the scheme in terms of securing a Heritage Asset outweighed the lack of amenity space and parking.
- 6.3 Impact on Residential Amenity**
- 6.3.1 Policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy indicates that development should safeguard the residential and local amenity.
- 6.3.2 The site has residential properties to the west. The layout of the site is such that there is no land to the west or north. The neighbours closest are those to the west although they are separated by the road. The existing west facing elevation has 3 small windows which would provide light to the mezzanine area. There would be around 8m between these windows and the front elevations of the dwellings to the west. These 3 windows are currently high where users of the chapel would not be able to look out from. The mezzanine will bring these windows within reach of the future occupiers. In order to preserve the privacy of neighbours it will be conditioned that they are obscure glazed.
- 6.3.3 A condition will be imposed that no further openings can be created in the building elevation in order to prevent any future potential loss of privacy or impact on the character of the building. No extensions to the building are proposed and therefore the proposal would not result in there being any increased loss of light to surrounding properties.
- 6.3.4 The application includes the provision of the roof terrace to increase the occupiers access to open space, this will be accessed by a spiral staircase. To ensure that the privacy of the neighbours is not affected by occupiers using the roof terrace it is proposed that perforated metal fencing is installed. This will need to be of a type and height that prevent direct views from the roof terrace to the windows opposite.
- 6.3.5 Overall in view of the above it is considered that the proposed development subject to appropriate planning conditions, will not have an unacceptable impact on the residential amenities on the neighbouring properties.
- 6.4 Highways**
- 6.4.1 One concern has been raised by a local resident regarding the impact the proposal will have on the adjoining highway and also the parking provision. This is acknowledged by the Council's Highways Officer who would prefer 2 off street spaces to be provided. It is also commented on by the Highways Development Control Officer that as the use of the site was as a chapel, there would be the

potential for unrestricted usage of the premises by people using their cars. By creating a dwelling it would reduce the number of potential vehicles using the premises. It is also recognised that there is no existing problem with on street parking in the locality. As such it is considered that were the occupiers to have a car they could feasibly and safely park on the road if necessary along with any visitor's cars.

6.5 Affordable Housing

6.5.1 An appropriate affordable housing contribution will be sought in accordance with adopted Policy CS11 and the Housing SPD. In this case the number of dwellings proposed would not result in the on-site provision of affordable housing; instead a financial contribution would need to be made which would be secured by a S106 legal agreement.

6.6 Drainage

6.6.1 The proposed development does not propose any increase in roof area, as such there would not be any increase in surface water run off. There is no evidence of any particular drainage problem on the site. As such is not considered reasonable to impose conditions requiring the submission of drainage calculations as the existing system will be used.

7.0 CONCLUSION

7.1 It is considered that the conversion of the building to residential use will preserve the building for the future. Whilst it is not a listed building or within a conservation area, the works proposed will not have a significant impact on the external appearance of the building. The conditions recommended for inclusion will not only protect the appearance of the building for the future, but also protect the amenities of neighbouring properties. In view of the above subject to the applicant entering into a S106 legal agreement requiring the payment of the affordable housing contribution it is considered that the proposal meets the requirements of the NPPF, policies CS4, CS11 and CS17 of the Shropshire Core Strategy together with the SPD on the Type and Affordability of Housing.

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 - written representations, a hearing or inquiry.
- The decision is 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 a) promptly and b) in any event not later than six weeks after the grounds to make the

claim first arose first arose.

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

8.2 **Human Rights**

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

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

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

8.3 **Equalities**

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

9.0 **FINANCIAL IMPLICATIONS**

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

10. **Background**

Relevant Planning Policies

Central Government Guidance:
National Planning Policy Framework

Core Strategy and Saved Policies:
CS4- Community Hubs and Clusters
CS11- Type and Affordability of Housing
CS17- Environmental Networks

RELEVANT PLANNING HISTORY:

11. Additional Information

[View details online:](#)

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

Cabinet Member (Portfolio Holder) Cllr M. Price
--

Local Member Cllr David Lloyd MBE Cllr Robert Macey

Appendices APPENDIX 1 - Conditions

APPENDIX 1**Conditions****STANDARD CONDITION(S)**

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

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

2. The development shall be carried out strictly in accordance with the deposited plans and drawings as amended by the revised plan Numbers SK1(c), SK2(c), SK3(a), SK4(a), SK5(a) received on 25th January 2016.

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

CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES**CONDITION(S) THAT REQUIRE APPROVAL DURING THE CONSTRUCTION/PRIOR TO THE OCCUPATION OF THE DEVELOPMENT**

3. Prior to the installation of the spiral staircase shown on drawing no. SK1(c) details of screening for the western edge of the roof terrace shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details prior to first use of the roof terrace.

Reason: To protect the privacy of neighbouring occupants.

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

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that order with or without modification), the following development shall not be undertaken without express planning permission first being obtained from the Local Planning Authority:-

- extension to the dwelling
- addition or alteration to the roof
- erection of a porch
- any windows or dormer windows

Reason: To enable the Local Planning Authority to control the development and so safeguard the character and visual amenities of the area, and to ensure that adequate private open space is retained within the curtilage of the building.

5. The windows in the west elevation shall be glazed with obscure glass and shall thereafter be retained. No further windows or other openings shall be formed in that elevation unless otherwise agreed by the Local Planning Authority.

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

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Committee and Date
 North Planning Committee
 23rd February 2016

Item
8
 Public

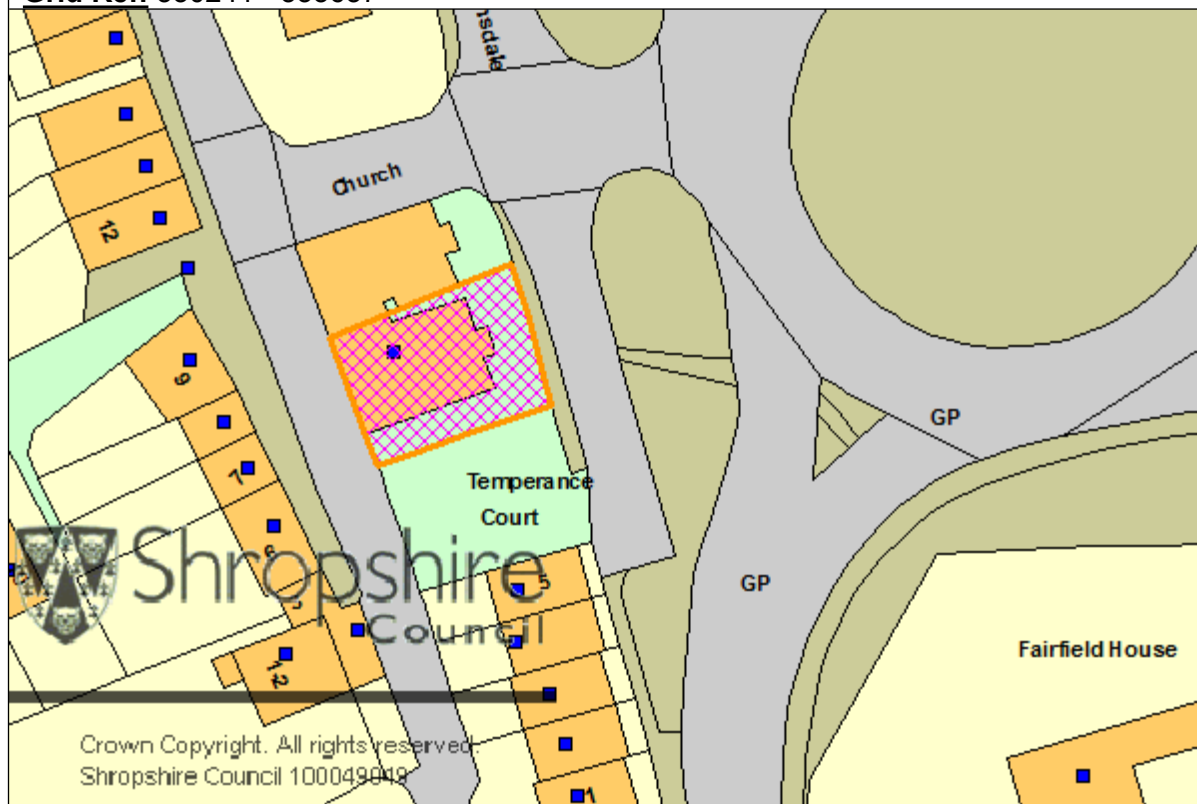
Development Management Report

Responsible Officer: Tim Rogers
 Email: tim.rogers@shropshire.gov.uk Tel: 01743 258773 Fax: 01743 252619

Summary of Application

Application Number: 15/05303/FUL	Parish:	Selattyn And Gobowen
Proposal: Conversion of former chapel to one dwelling		
Site Address: Gobowen Methodist Chapel Chirk Road Gobowen Oswestry Shropshire		
Applicant: Mr & Mrs E Roberts		
Case Officer: Mark Perry	email: planningdmnw@shropshire.gov.uk	

Grid Ref: 330241 - 333637



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Recommendation:- Grant Permission subject to the conditions set out in Appendix 1 and the applicant entering into a S106

REPORT

1.0 THE PROPOSAL

1.1 This application is for the conversion of the former Chapel to one dwelling including the provision of off-road parking to the side. This is one of two applications for the site. The site has 2 buildings comprising the main Chapel and the adjoining School Room. The conversion of the School Room to a dwelling is being considered under a separate application numbered 15/05302/FUL.

1.2 Some works to the building have already been carried out which has involved the erection of scaffolding which has raised concerns with the Parish Council. However as the building is not a listed structure, the works that have been done do not require planning permission and the issue of the scaffolding would be a matter for highway section rather than a planning consideration.

2.0 SITE LOCATION/DESCRIPTION

2.1 The building is located within Gobowen fronting onto a section of no through road which would have originally been the main road prior to the construction of the large roundabout. The no through road provides access to a small communal parking area for the 5 dwellings to the south. There are residential properties surrounding the site, terraced properties to the rear which are separated from the site by a narrow road; this a no through road for vehicles but for pedestrian it leads through the village shop. The space around the Chapel buildings is limited with the rear elevation is hard on the edge of the road behind. A small open space is provided to the front which is set behind a low brick wall.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

The Parish Council have objected to the application and raise issues which in the opinion of the Local members and the Chair of the Planning Committee warrant consideration by the Planning Committee.

3.1

4.0 COMMUNITY REPRESENTATIONS full details of the responses can be viewed online

4.1 Consultee Comments

4.1.1 **Affordable Housing Officer** - The affordable housing contribution proforma accompanying the application indicates the correct level of contribution and/or on site affordable housing provision and therefore satisfies the provisions of the SPD Type and Affordability of Housing.

4.1.2 **Drainage** – drainage details, plan and calculations could be conditioned if planning permission were to be granted:

- 4.1.3 **Highways** – No objection subject to parking provision being provided.
- 4.1.6 **Parish Council** – Query regarding the amount of parking. Does it comply with current building regulations? If so, is one parking space enough for a 4 bedroom house?
Exacerbates current issue with parking in the area.
Over-development of a very constrained site.
Illegal scaffolding - no lights or padding. Raises Health and Safety concerns.

- 4.1.7 **Conservation**
No objection to the re-use of a non-designated heritage asset to secure the long term conservation of the building.

4.2 **Public Comments**

- 4.2.1 No representations received at time of writing report

5.0 **THE MAIN ISSUES**

- Policy & Principle of Development
- Design, Scale and Character
- Impact on Residential Amenity
- Highways
- Drainage

6.0 **OFFICER APPRAISAL**

6.1 **Policy & Principle of Development**

- 6.1.1 Gobowen is a Community Hub, therefore Core Strategy Policy CS4 (Community Hubs and Clusters) is relevant, and this states that development in such areas which helps to rebalance rural communities by providing facilities, economic development or housing for local needs, and is of a scale that is appropriate to the settlement, will be allowed. It also seeks to ensure that such development is of a scale and design that is sympathetic to the character of the settlement and its environs.
- 6.1.2 CS4 also states that sensitively designed development that reflects the needs of the local community, and contributes towards much needed infrastructure and affordable homes for local people, has an important role to play in reinvigorating rural communities, and in reducing carbon emissions by maintaining local services and reducing the need to travel.
- 6.1.3 Within SAMDev policy S14.2(i) Gobowen is a Community Hub with a housing guideline of around 200 additional dwellings over the period to 2026, to be delivered through the development two specific sites together with development by infilling, groups of houses and conversions on suitable sites within the development boundary identified on the Policies Map.
- 6.1.4 The building is neither Listed or in a conservation and therefore is not afforded any Statutory protection to prevent it being demolished. However it is considered that the building is an undesignated Heritage Asset and the aim would be to try and ensure its future preservation rather than removing the buildings and replacing it with new build development. Heritage Assets make a valuable contribution

towards the character and appearance of an area so where possible putting such buildings into an alternative use is to be encouraged.

- 6.1.5 Officers consider that with reference to the above policy the proposal for the conversion of the Chapel building which is considered to be a Heritage Asset, into a single dwelling meets the relevant criteria of the above stated policy and is therefore acceptable in principle.

6.2 **Design, Scale and Character**

- 6.2.1 Policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy requires development to protect and conserve the built environment and be appropriate in scale, density, pattern and design taking into account the local context and character. The development should also safeguard residential and local amenity, ensure sustainable design and construction principles are incorporated within the new development. Policy 7 'Requiring Good Design' of the National Planning Policy Framework indicates that great weight should be given to outstanding or innovative designs which help raise the standard of design more generally in the area.
- 6.2.2 The applicant is proposing to make very little alterations to the external appearance of the building to retain its unique character and appearance. The ground floor will provide an open plan living, dining, kitchen area and this would be provided in a double height space. One bedroom would also be provided on the ground floor. The first floor would provide a further 3 bedrooms. It is proposed that one of the three large windows in the south elevation is turned into French door which will allow access into the garden area.
- 6.2.3 The small size of the plot and the comparatively large footprint of the building means that there is very limited amenity space. It has been possible to provide a narrow parking space and a patio to the side of the chapel both of which are up against the brick wall surrounding the neighbour's communal parking area. Further limited parking could be provided directly in front of the chapel but this would necessitate the removal of the boundary wall and parking would be unsightly directly in front of the chapel.
- 6.2.4 To protect the character of the building for the future a condition will be included on any planning permission granted, removing permitted development rights for alterations and extensions to the building.
- 6.2.5 It is fully acknowledged that the site is constrained in terms of its size and has very limited private amenity and car parking space which is considerably less than would normally be expected for a four bedroom dwellings, this does weigh negatively against the proposal. However, weight must also be awarded to the fact that the development will ensure the long term future of a historic building which contributes towards the character of the area. It is considered that the benefits of the scheme in terms of securing a Heritage Asset outweighed the lack of amenity space and parking.

6.3 **Impact on Residential Amenity**

- 6.3.1 Policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy indicates that development should safeguard the residential and

local amenity.

- 6.3.2 The site has residential properties to its southern and western sides with the highway to the east and west. The layout of the site is such that there is no land to the west or north. The neighbours closest are those to the west although they are separated by the road. The existing west facing elevation is currently blank and this will remain the case as part of the conversion. As such there will not be any overlooking to the existing dwellings at the rear. The existing north elevation will directly over look the neighbouring conversion scheme but only over a narrow alleyway rather than any useable amenity space. Any potential buyer of the neighbouring development would be aware of these existing windows.
- 6.3.3 A condition will be imposed that no further openings can be created in the building elevation in order to prevent any future potential loss of privacy or impact on the character of the building. No extensions to the building are proposed and therefore the proposal would not result in there being any increased loss of light to surrounding properties.
- 6.3.4 Overall in view of the above it is considered that the proposed development will not have an unacceptable impact on the residential amenities on the neighbouring properties.

6.4 **Highways**

- 6.4.1 Concern has been raised by Parish Council regarding the impact the proposal will have on the adjoining highway and also the parking provision. This is acknowledged by the Council's Highways Officer who would prefer 2 off street spaces to be provided. It is also commented on by the Highways Development Control Officer that as the use of the site was as a chapel, there would be the potential for unrestricted usage of the premises by people using their cars. By creating a dwelling it would reduce the number of potential vehicles using the premises. It is also recognised that there is no existing problem with on street parking in the locality. As such it is considered that any extra cars or visitors could feasibly and safely park on the road if necessary.

6.5 **Affordable Housing**

- 6.5.1 An appropriate affordable housing contribution is required in all cases in accordance with adopted Policy CS11 and the Housing SPD. In this case the number of dwelling proposed would not result in the on-site provision of affordable housing; instead a financial contribution would need to be made which would be secured by a S106 legal agreement.

6.6 **Drainage**

- 6.6.1 The proposed development does not propose any increase in roof area, as such there would not be any increase in surface water run off. There is no evidence of any particular drainage problem on the site. As such is not considered reasonable to impose conditions requiring the submission of drainage calculations as the existing system will be used.

7.0 **CONCLUSION**

- 7.1 It is considered that the conversion of the building to residential use will preserve the building for the future. Whilst it is not a listed building or within a conservation

area, the works proposed will not have a significant impact on the external appearance of the building. The conditions recommended for inclusion will not only protect the appearance of the building for the future, but also protect the amenities of neighbouring properties. In view of the above subject to the applicant entering into a S106 legal agreement requiring the payment of the affordable housing contribution it is considered that the proposal meets the requirements of the NPPF, policies CS4, CS11 and CS17 of the Shropshire Core Strategy together with the SPD on the Type and Affordability of Housing.

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 - written representations, a hearing or inquiry.
- The decision is 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 a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.

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

8.2 **Human Rights**

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

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

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

8.3 **Equalities**

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

9.0 FINANCIAL IMPLICATIONS

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

10. BackgroundRelevant Planning Policies

Central Government Guidance:
National Planning Policy Framework

Core Strategy and Saved Policies:
CS4- Community Hubs and Clusters
CS11- Type and Affordability of Housing
CS17- Environmental Networks

RELEVANT PLANNING HISTORY:

11. Additional Information

View details online:

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
Cabinet Member (Portfolio Holder) Cllr M. Price
Local Member Cllr David Lloyd MBE Cllr Robert Macey
Appendices APPENDIX 1 - Conditions

APPENDIX 1

Conditions

STANDARD CONDITION(S)

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

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

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

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

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

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that order with or without modification), the following development shall not be undertaken without express planning permission first being obtained from the Local Planning Authority:-

- extension to the dwelling
- addition or alteration to the roof
- erection of a porch
- any windows or dormer windows

Reason: To enable the Local Planning Authority to control the development and so safeguard the character and visual amenities of the area, and to ensure that adequate private open space is retained within the curtilage of the building.

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

Reason: To ensure the provision of adequate car parking, to avoid congestion on adjoining roads, and to protect the amenities of the area.

Informatives

1. The land and premises referred to in this planning permission are the subject of an Agreement under Section 106 of the Town and Country Planning Act 1990.

-



<u>Committee and Date</u>
North Planning Committee
23 rd February 2016

<u>Item</u>
9
Public

Development Management Report

Responsible Officer: Tim Rogers
 Email: tim.rogers@shropshire.gov.uk Tel: 01743 258773 Fax: 01743 252619

SCHEDULE OF APPEALS AS AT COMMITTEE 23rd February 2016

Appeals Lodged

LPA reference	14/05616/OUT
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr and Mrs Lea – C/O Greenspace Architects
Proposal	Outline application (access for approval) for residential development altering two existing vehicular accesses
Location	Land At Bembows Close Childs Ercall Shropshire
Date of appeal	21.01.16
Appeal method	Written Representations
Date site visit	
Date of appeal decision	
Costs awarded	
Appeal decision	

LPA reference	15/00288/OUT
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr L Gibbons – C/O Big Tree Planning
Proposal	Outline application (access for approval) for the erection of three dwellings
Location	Proposed Residential Development Land To The East Of Whitchurch Road Prees
Date of appeal	09.02.16
Appeal method	Written Representations
Date site visit	
Date of appeal decision	
Costs awarded	
Appeal decision	

Appeals determined

LPA reference	15/00291/OUT
Appeal against	Refusal
Committee or Del. Decision	Committee
Appellant	CMS JAW Ltd
Proposal	Outline application for residential development to include means of access
Location	Land NE of the Cemetery, Swan Hill, Ellesmere
Date of appeal	26 th October 2015
Appeal method	Written Representations
Date site visit	
Date of appeal decision	25 th January 2016
Costs awarded	
Appeal decision	Dismissed

LPA reference	14/01654/OUT
Appeal against	Refusal
Committee or Del. Decision	Committee
Appellant	Mr M Richardson and Partners
Proposal	Outline application for residential development (All Matters Reserved)
Location	Land off Aspen Grange, Weston Rhyn, Oswestry
Date of appeal	20.11.2015
Appeal method	Written Representations
Date site visit	
Date of appeal decision	25 th January 2016
Costs awarded	
Appeal decision	Dismissed

LPA reference	14/00910/OUT
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr Edward Goff
Proposal	Outline application (all matters reserved) for the erection of 5 dwellings
Location	Land adjacent Valve House, Hindford, Whittington
Date of appeal	28th August 2015
Appeal method	Written Representations
Date site visit	
Date of appeal decision	26th January 2016
Costs awarded	
Appeal decision	Dismissed

LPA reference	14/03934/FUL
Appeal against	Non-determination
Committee or Del. Decision	
Appellant	Mr Christopher and Mrs Rosemary Horton
Proposal	Erection of 10 dwellings to include alterations to pedestrian footpath link to Cremorne Gardens; works to brick wall
Location	Church Street, Ellesmere, SY12 0HD
Date of appeal	16 th October 2015
Appeal method	Written Representations
Date site visit	
Date of appeal decision	10 th February 2016
Costs awarded	
Appeal decision	Dismissed and planning permission refused

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Appeal Decision

Site visit made on 8 December 2015

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 25th January 2016

Appeal Ref: APP/L3245/W/15/3132270

Land north east of the cemetery, Swan Hill, Ellesmere, Shropshire, SY12 0LZ.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant outline planning permission.
 - The appeal is made by CMS JAW Ltd. against the decision of Shropshire Council.
 - The application Ref. 15/00291/OUT, dated 21 January 2015, was refused by notice dated 6 August 2015.
 - The development proposed is the construction of up to 9 no. single storey dwellings with rooms in the roof space.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. The proposal is in outline format for the construction of up to 9 single storey dwellings, with accommodation in the roof, and with details of the access to the site to be considered at this stage, but all other detailed matters are reserved for subsequent approval. The proposal included plans of the layout of the 9 houses and a street scene elevation but I have treated these as for illustration only.
3. A Unilateral Undertaking, made under section 106 of the Act, dated 11 December 2015 and signed by the appellant company has been submitted as part of the appeal. In general terms this covenants the landowner to pay a contribution in accordance with the Council's Supplementary Planning Document (SPD) to facilitate the delivery of affordable housing off site and to transfer the 'Community Land' to the Mere Charitable Trust to be used as land for community benefit.

Main Issues

4. The main issues are
 - The accord of the proposal with the development strategy for the area;
 - The effect of the proposal on the character and appearance of the area including the setting of the Ellesmere Conservation Area.

Reasons

Background

5. The appeal site comprises an area of open land of about one hectare in extent which lies on the edge of Ellesmere. It is situated to the east of the chapel and cemetery; to the south of Swan Hill which has housing on the northern side of the road; and to the south lies 'The Mere' itself and the public space of Cremorne Gardens. The land rises slightly from Swan Hill before plateauing out and then falling steeply down to the Gardens. This embankment is wooded with mature trees and the boundary of the Ellesmere Conservation Area lies close to the southern edge of the application site. The individual and groups of trees on the bank are subject to a Tree Preservation Order, however the site itself has no other special designation.
6. It is proposed to develop part of the site for residential purposes and the indicative plan shows a possible layout of 9 houses on about half of the site with a new access from Swan Hill. The other half of the site, about 0.6ha, that is part of the plateau and the bank, is shown to be used for community purposes and the land is to be gifted to The Mere Charitable Trust. A 3m buffer of land adjacent to the cemetery is also proposed.
7. I note that a previous application for 22 dwellings and an extension to the cemetery was refused by the Council and a subsequent appeal was dismissed in January 2014¹. The inspector concluded that the proposal conflicted with policies restricting development outside settlement boundaries and also that the housing then proposed would be harmful to the character and appearance of the surrounding area in terms of its unacceptable impact on the setting of 'The Mere'; the historic designated parkland of Cremorne Gardens; the street scene of Swan Hill; and the setting of the Conservation Area.

Policy context

8. The Council's formal decision notice refers to saved policies in the Oswestry Borough Local Plan; the adopted Shropshire Core Strategy (2011) (CS) and the emerging Site Allocations and Management of Development – Development Plan Document (DPD) (SAMDev). However, the Council advises that the Examining Inspector issued a final report on the SAMDev on the 30 October 2015 where she indicated that with the modifications specified the Plan would be 'sound'. The Council adopted the modified SAMDev on the 17 December 2015 and therefore the plan is now afforded full weight. It also appears to me that in these circumstances the 'old' saved policies in the Oswestry Borough Local Plan (or the North Shropshire Local Plan as advised by the appellant's agent) are no longer applicable. I will consider the appeal on the basis that the development plan comprises the CS and the SAMDev.

Accord with development strategy

9. The Core Strategy (Policy CS1) plans to deliver a minimum of 27,500 new homes in the country by 2026 in a sustainable manner and with a 'rural rebalance' directing about 35% of the grown to the identified rural areas. Within this strategy Policy CS3 indicates that market towns will be *foci* for economic development and regeneration. Housing of an appropriate design that respects each town's distinctive character will take place within the town's boundaries and

¹ APP/L3245/A/13/2204997

on sites allocated for development. In north-west Shropshire the specified markets towns include Ellesmere. Policy CS5 indicates that development in the countryside will be strictly controlled, and outside settlements housing development will be limited to essential agricultural dwellings and conversions of buildings to affordable housing.

10. The parties agree that the appeal site does not lie within the settlement boundary of Ellesmere nor is it allocated for development in the SAMDev in Policy S8. The proposal therefore conflicts with the basic countryside protection policy CS5.
11. Nevertheless, the appellant's agent stresses the modifications (MM14 and MM17) put forward to SAMDev Policy MD3 about managing the delivery of housing development. In this, the examining Inspector felt that greater emphasis should be placed on the position that local housing guidelines are not a maximum figure but a level that is sustainable and appropriate during the plan period. The revised policy makes reference to paragraph 49 of the Framework which effectively allows housing development to take place beyond settlement boundaries if a five year supply of housing land (5YHLS) in Shropshire is not demonstrated.
12. Although the previous inspector recognised in January 2014, that the Council could not then demonstrate a 5YHL supply, it is not the appellant's case that there is still a shortfall. Further, the assessment of an adequate supply of new housing was one of the fundamental aspects of the SAMDev Examination and the Examining Inspector concluded in paragraph 70 of her report that the plan addresses the housing allocations necessary to ensure delivery of the required scale of housing consistent with the CS and the objectively assessed housing need. I am therefore satisfied that at the moment the requirements of paragraph 49 of the Framework are met.
13. Even so the appellant's agent submits that having a 5YHLS is no impediment to planning permission being granted for development outside settlement boundaries for other suitable sustainable housing development subject to the criteria laid out in policy MD3. Examples of how the modified policy MD3 has been interpreted in recent appeal decision have been submitted², and I will take into account this modification to the now adopted policy.

Effect on character and appearance

14. At the site visit I considered the surroundings of the site from the site itself, Swan Hill and from Cremorne Gardens. From the centre of the appeal site there are extensive views of surrounding open land from the high elevation of the plateau and views out through the trees over The Mere. These views out are likely to be reciprocated and so the effect of the openness of the site is likely to be appreciated over a wide area. In my judgement, visually and physically the appeal site forms an integral part of the larger area of open land which extends to the south around the chapel. Further, I found that this countryside area contributes significantly to the setting of The Mere and the town and helps form its distinctiveness.
15. Although only a proportion of the site has been put forward for development, and the indicative plans show that the height of the properties could be kept low with

² APP/L3245/W/3001117; APP/L3245/W/15/3029727; APP/L3245/W/15/30003171

the first floor accommodation being in the roofspace, I judge that the visual impact of the houses would be prominent on the skyline from Swan Hill, especially when approaching from the lower end of the lane to the north-east; from around the houses opposite the site in Swan Lane; and from the cemetery land and chapel grounds. The presence of the housing development would be significantly at odds with the present character of openness and I find that it would harm the setting of the town.

16. There would also be a significant local impact caused by the alterations to the existing hedgerow and bank along Swan Hill necessary to make the proposed access and provide visibility splays and footways. These would require the removal of a long length of the existing hedge and some of the bank. While a new hedge could be planted on the inside of the footways this would take some time to mature and some of the enclosing effect of the bank along this side of Swan Hill would be permanently lost. I find that the proposal would have a moderately harmful effect on the present local character of Swan Hill.
17. In terms of the more local view from Cremorne Gardens it appeared to me at the site visit that the topography of the land is such, together with the set back of the house by the extent of 'community land', that the houses proposed would not be too apparent or prominent in this view and there would be some screening effect from the protected trees in between. Given that the local boundary of the Conservation Area lies around the edge of the Gardens I do not consider that the proposed development would have a harmful visual effect from this part of the footpath around The Mere, but there would be a wider impact on the setting of the Conservation Area with the presence of built development and loss of part of the open area from its distinctive character.
18. Overall, I conclude on this issue that although part of the proposal would retain a swath of open land for community use, the presence of the built development would result in the loss of an open area which positively contributes to the setting of The Mere and the town and that it also causes other local harmful visual impacts. On this basis the proposal does not accord with the requirements of policy CS6 in terms of protecting the natural environment and taking into account features which contribute to its local character and distinctiveness.
19. In terms of the statutory test, I find that the proposal would not preserve or enhance the character or the appearance of the heritage asset of the conservation area, although I consider that the proposal would lead to less than substantial harm.

Other matters

20. Representations made on the appeal by local people raise other concerns about the development proposed, including: the site having a poor access and the effect on highway safety; issues of the town's infrastructure being overloaded and essential services not be able to cope with more development and questioning the need for further housing; and concerns about the effect of the housing development on the Mere's eco-system.
21. However, there is no clear evidence before me to demonstrate that the local highway network cannot accommodate the traffic likely to be generated by the proposal nor is their evidence of significant deficiencies in infrastructure and services provision that would be made materially worse by the proposed residential development. In terms of ecological aspects, the appellant's scheme

included a Phase 1 Environmental Survey (May 2013) and this concluded, in essence, that there would be no ecological constraints to the development that could not reasonably be mitigated by conditions or licences required under other legislation. There is no detailed and expert evidence before me to contest the appellant's team's submissions. These factors raised under 'other considerations' do not therefore carry much weight in the planning balance.

Planning Balance

22. This application for housing development needs to be considered in the context of the national Framework in which the government wishes to encourage growth through sustainable development and seeks to boost significantly the supply of new housing. It is also clear that Ellesmere is a sustainable location and the principle of further development being accommodated in this market town has been accepted in the Core Strategy for the county and the very recently adopted SAMDev on the detailed aspects of housing provision.
23. However the conclusions I have reached on the main issues indicate that the proposed development would not accord with the newly adopted development strategy. Further the development would result in the loss of part of the present open area of countryside which makes a positive contribution to the setting of the town and the Mere. The development proposed would be visible on the high ground and the impact on the skyline together with the changes to the character of Swan Lane would be significantly harmful overall to the character and appearance of the area.
24. In terms of development plan policy I conclude that the proposal would not accord with policies CS5, CS6 and CS17 of the CS or policy S8 of the SAMDev. Further, in respect of policy MD3 of the SAMDev I consider that the adverse impacts mean that the proposed housing on the application site would not satisfy the requirements of 2(iv) of the policy even if the need for further housing was demonstrated.
25. These negative aspects have to be balanced with the benefits. I am satisfied that generally the site lies in a sustainable location. The proposal would provide more housing and the formal agreement would ensure that there would be an appropriate element of affordable housing as well as the gift of additional open land to the local community. However, the representations made on the appeal do not indicate to me that there is clear community support for this latter benefit.
26. I conclude that the positive aspects of the scheme and the public benefits put forward are not sufficient to outweigh the conflict with the development plan policies and the harm that I have identified that would be caused to the character and appearance of the area and to the heritage asset of the conservation area.

Conclusions

27. For the reasons given above I conclude that the appeal should be dismissed.

David Murray

INSPECTOR

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Appeal Decision

Site visit made on 11 January 2016

by Alison Partington BA (Hons) MA MRTPI

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

Decision date: 25 January 2016

Appeal Ref: APP/L3245/W/15/3138356

Land at Aspen Grange, Weston Rhyn, Oswestry, Shropshire SY10 7TS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr M Richardson (M Richardson and Partners) against the decision of Shropshire Council.
 - The application Ref 14/01654/OUT, dated 10 April 2014, was refused by notice dated 14 May 2015.
 - The development proposed is described as "outline application for residential development".
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline with all matters reserved. I have determined the appeal on this basis, treating the plan that shows the site layout as indicative.
3. Since the submission of the appeal the Council has adopted its *Site Allocations and Management of Development Plan* (SAMDev). The 'Final Comments' stage of the appeal process gave both parties the opportunity to address any implications arising from the adoption of this document. I have determined the appeal on the basis of the national and local policies as adopted at the present time.

Main Issues

4. The main issues in the appeal are:
 - Whether or not the proposal makes adequate arrangements for the disposal of foul drainage from the site; and
 - Whether or not the proposal makes adequate provision for affordable housing.

Reasons

Drainage

5. The appeal site is currently grazing land located to the south of housing on Brookfield Close and Aspen Grange. The village of Weston Rhyn has been classified as part of a Community Cluster within the recently adopted SAMDev

- and Policy S14.2(xi) identifies the village as one that is suitable for new housing. In particular the SAMDev allocates part of the appeal site for housing development subject to, amongst other things, appropriate drainage design.
6. The appellant has acknowledged that to progress the development of the site a Hydraulic Modelling Assessment would need to be carried out with Welsh Water. He considers that this can be adequately controlled by way of a condition which could ensure that this is completed before any development takes place. Although the application was recommended for approval on this basis, the Council has expressed concern, based on experience elsewhere, on whether a condition would be sufficient to prevent development commencing.
 7. I note that the condition used by the Council previously required that no dwelling should be occupied until the scheme for the drainage had been approved. I accept that the wording of that condition would not be adequate to ensure that the drainage was adequately addressed before any development took place. Notwithstanding this, I consider that altering the wording of the condition to state that no development should take place until a drainage scheme has been approved by the local planning authority, would be sufficient to ensure that drainage matters were adequately addressed before any development starts on the site. Such a condition would also meet the requirements for conditions set out in the *National Planning Policy Framework*.
 8. As such, I consider that a condition can be used to ensure that the development adequately addresses the disposal of foul drainage from the site before any development commences. Therefore there would be no conflict with Policy CS6 and CS8 of the *Shropshire Core Strategy (adopted March 2011)* (SCS) which seek to ensure that there is adequate capacity and availability of infrastructure to serve any new development.

Affordable Housing

9. It is indicated that some of the dwellings within the site would be provided as affordable housing. This would be in accordance with Policy CS11 of the SCS and the *Type and Affordability of Housing SPD (adopted September 2012)* (SPD) which seek the on-site provision of affordable accommodation for all developments of more than 5 dwellings. However, I do not have an executed S106 agreement, or a signed Unilateral Undertaking, before me to secure the provision of this affordable housing on the site.
10. The requirement for an affordable housing contribution as set out in the above policy and the SPD is necessary to the acceptability of the development, is directly related to it, and is fairly related in scale and kind. As such, it would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010, and the tests for planning obligations set out in the Framework. Without any mechanism before me which would secure the provision of the affordable housing, I am not satisfied that the proposed development would make adequate provision for affordable housing. Consequently, the proposal would be contrary to policy CS11 of the SCS.

Conclusion

11. Although I consider that a condition can be used to ensure that the development adequately addresses drainage on the site, the proposed

development would not make adequate provision for affordable housing. For this reason, I conclude that the appeal should be dismissed.

Alison Partington

INSPECTOR

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Appeal Decision

Site visit made on 17 November 2015

by Beverley Doward BSc BTP MRTPI

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

Decision date: 26 January 2016

Appeal Ref: APP/L3245/W/15/3133018

Field adjoining Valve House, Hindford, Whittington, Oswestry, Shropshire, SY11 4NR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Edward Goff against the decision of Shropshire Council.
 - The application Ref 14/00910/OUT, dated 28 February 2014, was refused by notice dated 27 February 2015.
 - The development proposed is described as "erection of 7 dwellings (including 1 affordable)."
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the heading above is taken from the planning application. However, the documentation submitted with the appeal indicates that the proposal was subsequently revised to reduce the number of proposed dwellings to 5. The Council dealt with the application on this basis and so shall I.
3. The planning application was submitted in outline with all matters reserved. I have dealt with the appeal on this basis. A layout plan was submitted with the planning application. However, I have taken this as being for indicative purposes only.
4. The Council's reason for refusal refers to policies of the Shropshire Local Development Framework: Adopted Core Strategy March 2011 (Core Strategy). However, in its appeal statement the Council indicated that the Shropshire Site Allocations and Management of Development (SAMDev) Plan had reached an advanced stage and that accordingly significant weight should be attached to the SAMDev Plan policies. During the course of the appeal the Inspector's Report on the examination into the SAMDev Plan was published. The Examining Inspector concluded that subject to the modifications set out in her report the SAMDev Plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework (the Framework). The SAMDev Plan has now been adopted. Accordingly, along with the Core Strategy it forms the statutory development plan for the area. I have considered the appeal on this basis.

5. The appellant was afforded the opportunity to comment on the implications for the appeal of the Inspector's Report on the examination into the SAMDev Plan. Accordingly, it has not been necessary to seek further comments on the adopted SAMDev Plan. The appellant was also afforded the opportunity to comment on the Council's Five Year Housing Land Supply Statement which was updated following receipt of the Inspector's report on the examination into the SAMDev Plan.

Main Issue

6. The main issue in this case is whether the proposal for housing development in this location would comprise a sustainable form of development having regard to its effect on the character and appearance of the area and the accessibility of services and facilities.

Reasons

7. Policy CS4 of the Core Strategy seeks to enable communities in the rural area to become more sustainable. It indicates that this will be achieved by focusing investment into Community Hubs and Community Clusters, allowing development in Community Hubs and Community Clusters that provides for local needs and is of a scale appropriate to the settlement, ensuring that market housing development makes sufficient contribution to improving local sustainability through a mix of housing and by delivering community benefits in the form of contributions to affordable housing for local people and contributions to identified requirements for facilities, services and infrastructure and ensuring that all development in Community Hubs and Community Clusters is of a scale and design that is sympathetic to the character of the settlement and its environs and satisfies policy CS6 of the Core Strategy. Policy CS4 indicates that Community Hubs and Community Clusters are identified in the SAMDev Plan.
8. The supporting text to policy CS4 of the Core Strategy indicates that development will only be allowed within settlements and that for planning purposes the countryside between the settlements is not part of the cluster. It also indicates that development in Community Hubs and Clusters will be within the village or on land that has been specifically allocated for development.
9. Hindford, along with the settlements of Park Hall, Babbinswood and Lower Frankton is identified within the SAMDev Plan as a Community Cluster. In relation to this cluster no specific site allocations are proposed in Hindford, Babbinswood and Lower Frankton where only limited infill and conversions will be appropriate within the development boundary.
10. The appeal site is a field on the south western edge of the settlement of Hindford. It lies at the rear (west) of a newly constructed dwelling which fronts onto the lane and to the south of three detached dwellings which are sited about 50 metres away. To the south and west of the appeal site are agricultural fields which form part of the extensive area of open countryside beyond.
11. The proposed development of 5 houses on the appeal site would, unlike the newly constructed dwelling to the east which is located between existing buildings alongside the lane, result in the encroachment of built form beyond the south western edge of the village, which in my view forms the development

- boundary, and into open countryside. Accordingly, it would not comprise limited infill development within the development boundary of Hindford which policy S14.2 (ix) of the SAMDev Plan indicates as appropriate but rather would comprise development within the open countryside.
12. Policy CS5 of the Core Strategy indicates that new development in the countryside will be strictly controlled in accordance with national planning policies protecting the countryside. New housing is limited by policy CS5 to that which is needed to house essential rural workers, affordable housing to meet a local need and the conversion of rural buildings. In relation to essential rural workers dwellings and affordable housing to meet a local need, development will be expected to take place in recognisable settlements or be linked to other existing development and business activity.
 13. It is no part of the appellant's case that the appeal proposal would be for any of the types of housing development listed in policy CS5. Accordingly, as the appeal proposal would be located in the countryside it would conflict with policy CS5 of the Core Strategy. This policy is broadly consistent with the core planning principle of the Framework of recognising the intrinsic character and beauty of the countryside and the advice at paragraph 55 of the Framework that to promote sustainable development in rural areas housing should be located where it will enhance or maintain the vitality of rural communities and that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances.
 14. The appeal site lies at the rear of a dwelling which fronts onto the lane. However, it is readily visible from the lane and despite the well established hedgerows which form its boundaries to the north, west and south it is essentially open, albeit not covered by any statutory or local landscape designations. The development of the appeal site would result in the loss of the open nature of the site, fundamentally changing its character and appearance and extending the built form of the settlement into the open countryside to the detriment of the character and appearance of the area.
 15. Notwithstanding the layout of the three detached dwellings to the north of the site, the general pattern of development within Hindford is of linear development with properties set within their own grounds alongside the lane. I appreciate that layout is a reserved matter. However, it seems to me that any development of 5 dwellings on the site would inevitably result in a suburban type layout uncharacteristic of the existing pattern of development in the locality. Furthermore given the relatively small scale of Hindford, comprising around only 19 dwellings, the proposed development for 5 houses on the site would not be of a scale appropriate to the rural character of the area.
 16. I appreciate that Hindford is identified as part of a Community Cluster. I also appreciate that it is served by a bus service to Ellesmere and Oswestry, albeit a somewhat limited service, and that although it has no facilities other than a public house, other local services and facilities are available in the larger settlement of Whittington about 1.5km away. However, Whittington is accessed from Hindford by a relatively narrow country lane with no footway. Accordingly, it seems to me that whilst the future occupants of the proposed houses may provide some support to help maintain the local services in Whittington, they would most likely be reliant upon the private car to access

- essential services and facilities, including shopping and employment, in the larger towns of Oswestry and Shrewsbury.
17. Taking all of the above into account therefore, the appeal proposal would not be consistent with the requirements of policy CS6 of the Core Strategy. This policy indicates that the creation of sustainable places will be achieved by a number of things. These include ensuring that all development protects, restores, conserves and enhances the natural, built and historic environment and is appropriate in scale, density, pattern and design taking into account the local context and character and those features which contribute to local character and requiring proposals likely to generate significant levels of traffic to be located in accessible locations where opportunities for walking, cycling and the use of public transport can be maximised and the need for car based travel reduced.
 18. Policy CS6 of the Core Strategy is consistent with the core planning principles of the Framework that planning should take account of the different roles and characters of different areas recognising the intrinsic beauty of the countryside, contribute to conserving and enhancing the natural environment and actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling and focus significant development in locations which are or can be made sustainable.
 19. The appellant refers to windfall development as a key requirement of the housing land supply as indicated by the supporting text to policy MD3 of the SAMDev Plan. Policy MD3 indicates that in addition to the development of the allocated housing sites set out in the Settlement Policies S1-S18, planning permission will also be granted for other sustainable housing development subject to other policies in the plan, including policy CS5. I have concluded that the proposal would be contrary to policy CS5. Accordingly, it would not be an appropriate windfall development as provided for by policy MD3.
 20. Both parties have referred me to a number of other appeal decisions in which the issue of housing land supply has been considered, some of which have been allowed and others dismissed. All of these pre-date the publication of the latest update of the Council's Five Year Housing Land Supply Statement (5YHLSS) which was produced on 30 October 2015 following receipt of the Inspector's report on the examination into the SAMDev Plan. The latest update of the 5YHLSS uses the methodology utilised in the Inspector's report and indicates that Shropshire currently has a 5.53 year supply of deliverable housing land. The appellant has not provided any evidence to dispute this. Accordingly, on the basis of the evidence before me there is nothing to lead me to conclude that the Council does not have a 5 year supply of housing land as required by the Framework. In the light of this, and the adoption of the recently examined SAMDev Plan, the policies for the supply of housing can be considered up to date.
 21. The appeal proposal would provide some economic and social benefits. It would provide housing, initially bringing short term employment opportunities during the construction of the houses and then providing homes whose occupiers would contribute to the local economy. It would also contribute to the overall supply of housing. The scheme would also result in a Community Infrastructure Levy (CIL) payment. However, given the scale of the proposed development any benefits in these respects would be somewhat limited.

22. The occupants of the proposed houses may help support local services. However, in Hindford these are limited to the public house. Although there are some local services in Whittington the occupants of the proposed houses are most likely to be reliant upon the private car to access these and those in the larger towns of Oswestry and Shrewsbury.
23. The appellant indicates that the proposal would provide financial support for the diversification of his existing farm business thereby contributing to the local economy and providing employment opportunities. However, there is no guarantee that the proceeds from the proposed development would be invested in this way. The appellant indicates a willingness to enter into an appropriate legal agreement to ensure that the proceeds of the development would be reinvested in this manner. However, no such agreement is before me. In any event even if it were it would need to satisfy the relevant tests set out in the Community Infrastructure Levy Regulations 2010 which indicate that a planning obligation may only constitute a reason for granting planning permission if it is necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. I am not satisfied that these tests would be met in this case.
24. I note the appellant's willingness to make the necessary contribution toward affordable housing in accordance with policy CS11 of the Core Strategy. However, I have not been provided with a mechanism to secure this. Therefore, it would not be appropriate to consider any social benefits which might be provided by the proposal in this respect.
25. I note that the appellant indicates that a pond and enhancement planting would be provided on the site. Accordingly, there may be some environmental benefits in terms of the biodiversity of the area. However, as I have found above, the proposal would cause material harm to the character and appearance of the settlement and the surrounding countryside. This weighs heavily against the proposal. Accordingly, the limited economic, social and environmental benefits would not outweigh the adverse impacts I have found above.

Conclusion

26. To conclude therefore, drawing together all of the above, the proposal for housing development in this location would not comprise a sustainable form of development having regard to its effect on the character and appearance of the area and the accessibility of services and facilities. It would conflict with policies CS5 and CS6 of the Core Strategy. Although Hindford is identified as a location for future housing growth as part of a Community Cluster under policy CS4 of the Core Strategy the appeal proposal would not accord with the requirements of policy S14.2 (ix) of the SAMDev Plan which indicates the type of development appropriate in Hindford as part of the Community Cluster. Furthermore, it would not comprise the form of windfall development deemed appropriate by policy MD3 of the SAMDev Plan.
27. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Beverley Doward INSPECTOR

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Appeal Decision

Site visit made on 21 December 2015

by Geoffrey Hill BSc DipTP MRTPI

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

Decision date: 10 February 2016

Appeal Ref: APP/L3245/W/15/3129922

Church Street, Ellesmere, Shropshire SY12 0HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Christopher and Mrs Rosemary Horton against Shropshire Council.
 - The application Ref 14/03934/FUL, is dated 26 August 2014.
 - The development proposed is described as "residential development of land off Church Street and Talbot Lane to create 10 new dwellings of various sizes. The proposals also include the improvement of the town's link to the Mere by creating a wider public route from the Church Street pelican crossing to the entrance of Cremorne Gardens, enlarging the opening in the brick wall to 7 to 8 metres. Drainage alterations to Rosemary Cottage will also form part of the application".
-

Decision

1. The appeal is dismissed and planning permission refused.

Planning Policy Context

2. The appellants make the point that the planning application was made in July 2014¹, before the Shropshire Sites Allocation and Management of Development (SAMDev) Plan had been adopted. The appellants argue that the appeal should be considered in the context only of the Shropshire Core Strategy, which was the operative development plan document at the time the application was made.
3. I understand the appellants' frustrations that the processing of the application and the administration of the appeal have incurred lengthy delays – all of which were beyond the control of the appellant – but with the consequence that a new development plan context (ie the SAMDev Plan) is now in place. I note the appellant's argument that the appeal should be determined against the policies which were in force at the time the application was made. However, having regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004, it is my duty to consider the appeal in the light of the current development policies. Also relevant in the determination of this appeal is government planning policy, as set out in the National Planning Policy Framework (NPPF).

¹ The planning application form is actually dated 26 August 2014

Main Issues

4. The appeal was made in respect of the Council's failure to issue a decision within the prescribed period. Consequently, the Council has been precluded from making a decision on the application. Although the Council has submitted a statement of case to explain its views on the proposed scheme, this does not present the Council's objections in the form of resolved or putative reasons for refusal. Consequently, there is no clearly stated focus of the Council's rationale for objecting to the proposed scheme, nor are the relevant development plan policies specifically referenced in its Statement. However, from the representations I discern that there are three main issues in this appeal:
 - i) the effect of the proposed development on the character and appearance of the area;
 - ii) the effect on the setting of nearby listed buildings.
 - iii) the effect on highway safety of traffic and safety of pedestrians.

Reasons

Character and appearance

5. The appeal site lies outside the development boundary for Ellesmere defined in the recently adopted SAMDev Plan. Accordingly, the proposed development has to be regarded as falling to be considered under the Countryside policies in the SAMDev (Policies MD7a MD7b).
6. Policy MD7a seeks to restrict new residential development in the countryside other than for essential rural workers. Exceptions may be allowed where there is proven local housing need, but the scheme under consideration in this appeal is not being put forward to meet such a need. Policy MB7d explains that part – at least – of the rationale for resisting new development in the countryside is to minimise the impact of new development and to conserve the historic landscape. These policies are consistent with and supported by Shropshire Local Development Framework Core Strategy Policy CS5.
7. The Council contends that the scheme would not be sensitive to the setting of Cremorne Gardens and the Mere. The site is within the Ellesmere Conservation Area. SAMDev Policy MD13 seeks to conserve the significance and setting of heritage assets. Section 72 of the Planning (Listed Buildings and Conservation Areas) 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. The Conservation Area includes not only the historic core of built development in the town, but also the land running down to the Mere from the town. The Mere is clearly an important open area within the Conservation area, which is appreciated for its visual amenity and leisure value.
8. The appeal site is not in truly open countryside: it is land largely behind existing frontage development, lying between Church Street and Cremorne Gardens. That is, the impact on the wider or rural historic landscape would be negligible. However, having regard to the adopted policy, it has to be regarded as part of the 'countryside'. The appeal scheme clearly would introduce development where none exists at present, and where there is no need in terms of providing accommodation for essential rural workers.

9. The appeal site is an undeveloped area – albeit part has a planning permission for use as a car park – which forms part of the setting for the Mere and the adjacent Cremorne Gardens. Development here would consolidate the present informal pattern of built development and undeveloped areas hereabouts, bringing built development closer to the Mere. This would erode the setting of the Mere and its value as a leisure and visual amenity in this part of the town. There is public access through this area, and development here would degrade the conservation area experience for pedestrians when walking between the town and the Mere.
10. I acknowledge that English Heritage (EH) had indicated that the design of the proposed dwellings could be acceptable subject to careful consideration of details, but EH did raise an objection relating to the visual relationship between houses on plots 2-5 and the boundary with Cremorne Gardens and the Mere. The appellants have suggested that this might be resolved by means of a planning condition. A revision of the site boundary and possible adjustment of land ownerships cannot be a requirement of a planning condition, and it is not clear that such an adjustment would be both acceptable and achievable were it to be set out in a 'Grampian' style condition. That is, I do not consider that this objection has been, or is realistically capable of being, resolved as part of the appeal scheme.
11. Drawing the above points together, the proposed scheme would introduce built development into the currently open and generally informal transitional area between the built up area of the town and the Mere. This would harm the character and appearance of the area in terms of it introducing development into an area now categorised as 'countryside', nor would it serve to preserve or enhance either the character or appearance of the Conservation Area, contrary to the objectives of the development plan policies.

Setting of listed buildings

12. The Council also argues the scheme would not be sensitive to the setting of the nearby listed buildings. Nos. 7, 9, 11 and 13 Church Street are listed buildings. SAMDev Policy MD13 is the relevant policy for this concern.
13. For the most part, the proposed dwellings would be set apart from these listed buildings, but the house proposed on Plot No.1 could be close enough to impact upon the setting of No.9. However, there is no clear discussion on this point in the appeal submissions and hence there is no compelling evidence to regard this as an overriding concern.
14. Concern has been raised by an interested person about the proximity of the garage for the dwelling on Plot 5 and Cremorne Cottage. It is said that Cremorne Cottage is a listed building although I have not been provided with details of its listing and what in particular about its setting needs to be respected. The proposed garage is shown to be sited within 2 metres of the corner of Cremorne Cottage, which may impinge upon the setting of the listed building. Having said that, I accept that there is scope to reposition the garage should the appeal be allowed. It is possible that this point could be covered by a planning condition if the scheme were found to be acceptable on all other grounds.

15. On this second main issue, whereas I recognise the appeal scheme has the potential to affect the setting of listed buildings, the evidence submitted is not detailed nor persuasive about which properties could be affected, how the setting(s) could be harmed, or to what extent. In which case, I conclude on this main issue that, on the evidence before me, the proposed scheme would not unacceptably harm the setting of any nearby listed buildings.

Highway safety

16. The proposed scheme shows two access points onto Church Street / Talbot Road. Church Street/ Talbot Road is a main road through the town (A495), and it carries an appreciable volume of mixed traffic, including heavy goods vehicles. Under these circumstances, it is reasonable to require new development to provide safe access points on to the highway.
17. I have not been provided with any local policies or guidance on highway safety and design of access points. However, the guidance given in Manual for Streets (MfS) is relevant. Church Street is subject to a 30 mph speed limit in the vicinity of the appeal site. Section 7 of MfS indicates that there should be clear visibility at the access in each direction of 43 metres at a point 2.4 metres back from the edge of the carriageway.
18. The main access is to the eastern end of the site, close to the present pedestrian crossing. Here the access is proposed to be 4.8 metres wide, which would be just about wide enough to allow two cars to pass, meaning that it is unlikely that vehicles would have to wait or manoeuvre on Church Street to enter or leave the site. Visibility to the east would be unobstructed, but to the west the control cabinets for the pedestrian crossing interfere with a clear view. Having said that, I accept that this access point is effectively the same as that for the approved car park use of the land. No evidence has been put before me of any accidents having happened at this access, or other safety issues relating to its use. It would therefore seem to be inconsistent to regard the presence of the control cabinets as a major objection.
19. The western access (Talbot Lane) is narrower where it runs between No.21 Talbot Street and Yolande Court, and vehicles would not be able to pass one another on this track. The approach to the access is across a wide verge between the houses and the highway and I accept that this is probably wide and deep enough for vehicles to wait for a clear passage in the event of another vehicle being on the track. However, this verge is thickly planted with shrubs which obstruct visibility to the west. There is a need for clear visibility in this direction because of the curve in Talbot Street, which itself has the potential to obscure traffic travelling towards the site from Sparbridge.
20. I acknowledge that the planting could be cut down to below a level where it would not obstruct visibility, but this is on land outside the ownership or control of the appellants, and the appellant cannot give an assurance that the vegetation will be cut down, either initially to allow the development to go ahead or that it would be subsequently maintained thereafter at an appropriately low height. I do not consider that a satisfactory resolution of this concern can be imposed or assumed through planning conditions, either directly or through a 'Grampian' style condition. Intensification of the use of this access would, therefore, represent an unacceptable risk to highway safety.

Other Matters

21. Were the appeal to be allowed and permission granted there would be an expectation that a proportion of the development would be made available as affordable housing. This would usually be secured through a planning obligation made under Section 106 of the Town and Country Planning Act 1990. The appellants have agreed to provide such an obligation were the appeal to be allowed. It is usual for a completed planning obligation to accompany firstly the planning application and subsequently the appeal submissions. I acknowledge that the absence of a completed obligation might have been addressed if the scheme was seen to be acceptable in all other respects, but not having one before me as part of the appeal submissions does add weight to the rationale for dismissing the appeal.
22. Objections have been raised by persons who live close to the site that the proposed houses would overlook neighbouring properties, such that it would interfere with their privacy. The occupants of two properties in particular have raised such concerns: No.9 Church Street and The Old Estate Yard. The house on Plot No.1 would be within 2 metres of the boundary with No.9 Church Street. There would be no windows to habitable rooms on the rear elevation of the proposed house and hence there would be no risk of overlooking or loss of privacy for the occupants of No.9. However, it is likely that the proposed house would appear uncomfortably close and overbearing for persons using the garden of No.9.
23. The House on Plot No.2 would look towards The Old Estate Yard, with some 13 metres between the facing elevations. There is a brick wall across the frontage of The Old Estate Yard which presently screens the ground floor rooms of this property. Some of the first floor rooms do look out over Plot No.2 but the design of the proposed house shows only secondary windows facing towards The Old Estate Yard. These could be required to be obscure glazed, and thereby safeguard the privacy for the occupants of The Old Estate Yard. Having regard to the relationship between buildings in the centre of Ellesmere, 13 metres separation between facing elevations is not unusual or uncharacteristic.
24. The Council's advisor on archaeological matters notes that the site is seen to have a high archaeological potential. Having regard to paragraph 128 of NPPF, and taking into account the advice that the likelihood of there being high value archaeology under this site, it is not unreasonable to require more than just a desk study to be undertaken before coming to a decision on whether to grant planning permission here. I note that a geophysical survey has been carried out and this is amongst the application documents. However, this seemingly is not sufficient to satisfy the concerns of the Council's advisor. In the absence of further information from the advisor, and in view of the fact that the proposed scheme is to be dismissed on other grounds, I do not consider that it is necessary for me to come to a definitive conclusion as to whether sufficient information has, or has not, been submitted on the archaeology of the site to justify dismissing the appeal on this point.
25. Part of the site has planning permission for use as a car park, but the car park is not surfaced and there is no built development on the land. It does not, therefore, fall within the definition of previously developed land given at

Annex 1 to NPPF. Accordingly, the fact that it can be used as a car park does not support the argument that the land should now be considered as a brownfield site, and therefore suitable for built development.

26. I acknowledge that the appeal site had been identified in the Strategic Housing Land Availability Assessment (SHLAA) which suggests that it may once have been considered a suitable candidate site for housing development. However, the SHLAA is not a policy document: it is simply part of the evidence base which contributed towards the identification and selection of preferred sites to be included in the SAMDev Plan. Clearly, it was not carried through from the SHLAA into the adopted policy document. The fact that the site had been identified in the SHLAA does not override the now adopted plan.
27. I also note the appellants' claim that the preferred housing site in Ellesmere may not come forward for development as envisaged in the SAMDev Plan. I have no conclusive evidence on this point. If allocated sites are not coming forward as envisaged in the plan this would be identified in the Annual Monitoring Report (AMR) and, if necessary, the plan can be revised. In view of the fact that the SAMDev Plan was only adopted in December 2015 a year has not yet elapsed to set the context for the AMR. On the basis of the evidence before me in this appeal, it is not appropriate for this appeal to set aside the conclusion of the Examination of the SAMDev Plan so soon after it has been adopted, nor to pre-empt the outcome of the AMR.

Overall Conclusion

28. The proposed scheme would harm the character and appearance of the area, and increased use of the western access would jeopardise conditions of highway safety. No other matters raised in support of the appeal outweigh the harm discussed above, and would not justify coming to a decision other than in accordance with the development plan. Accordingly, the appeal should be dismissed and planning permission refused.

Geoffrey Hill

INSPECTOR