



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

Date: Monday, 16 September 2019

Committee:
South Planning Committee

Date: Tuesday, 24 September 2019
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
Director of Legal and Democratic Services (Monitoring Officer)

Members of the Committee

Andy Boddington
David Evans
Simon Harris
Nick Hignett
Richard Huffer
Cecilia Motley
Tony Parsons
Madge Shingleton
Robert Tindall
David Turner
Tina Woodward

Substitute Members of the Committee

Roger Evans
Nigel Hartin
Christian Lea
Elliott Lynch
Dan Morris
Kevin Pardy
William Parr
Kevin Turley
Claire Wild
Leslie Winwood
Michael Wood

Your Committee Officer is:

Linda Jeavons Committee Officer
Tel: 01743 257716
Email: linda.jeavons@shropshire.gov.uk

AGENDA

1 Election of Chairman

To elect a Chairman for the ensuing year.

2 Apologies for Absence

To receive any apologies for absence.

3 Appointment of Vice-Chairman

To appoint a Vice-Chairman for the ensuing year.

4 Minutes

To confirm the minutes of the South Planning Committee meeting held on 28 August 2019. **TO FOLLOW**

Contact Linda Jeavons (01743) 257716.

5 Public Question Time

To receive any questions or petitions from the public, notice of which has been given in accordance with Procedure Rule 14. The deadline for this meeting is no later than 2.00 pm on Friday, 20 September 2019.

6 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.

7 Cartway Cottage, Woodbank, Abdon, Craven Arms, Shropshire (18/00027/FUL) (Pages 1 - 10)

Erection of detached garage and formation of turning area.

8 Proposed Dwelling To The East Of Corfton, Shropshire (18/03863/OUT) (Pages 11 - 30)

Outline application for the erection of detached cottage and garage to include means of access.

9 Proposed Commercial Development Land To The North Of Bishops Castle Business Park, Bishops Castle, Shropshire (19/02268/FUL) (Pages 31 - 48)

Erection of four industrial units; formation of estate road and parking areas with planting scheme.

10 St Mary's Church, Bridgnorth (19/02793/FUL) (Pages 49 - 72)

11 Park Farm, Angel Lane, Farden, Ludlow, Shropshire (19/03195/FUL) (Pages 73 - 84)

Erection of two storey and single storey extensions and improvements to existing farmhouse.

12 Schedule of Appeals and Appeal Decisions (Pages 85 - 118)

13 Date of the Next Meeting

To note that the next meeting of the South Planning Committee will be held at 2.00 pm on Tuesday, 22 October 2019, in the Shrewsbury Room, Shirehall.

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Agenda Item 7



Committee and date

South Planning Committee

24 September 2019

Development Management Report

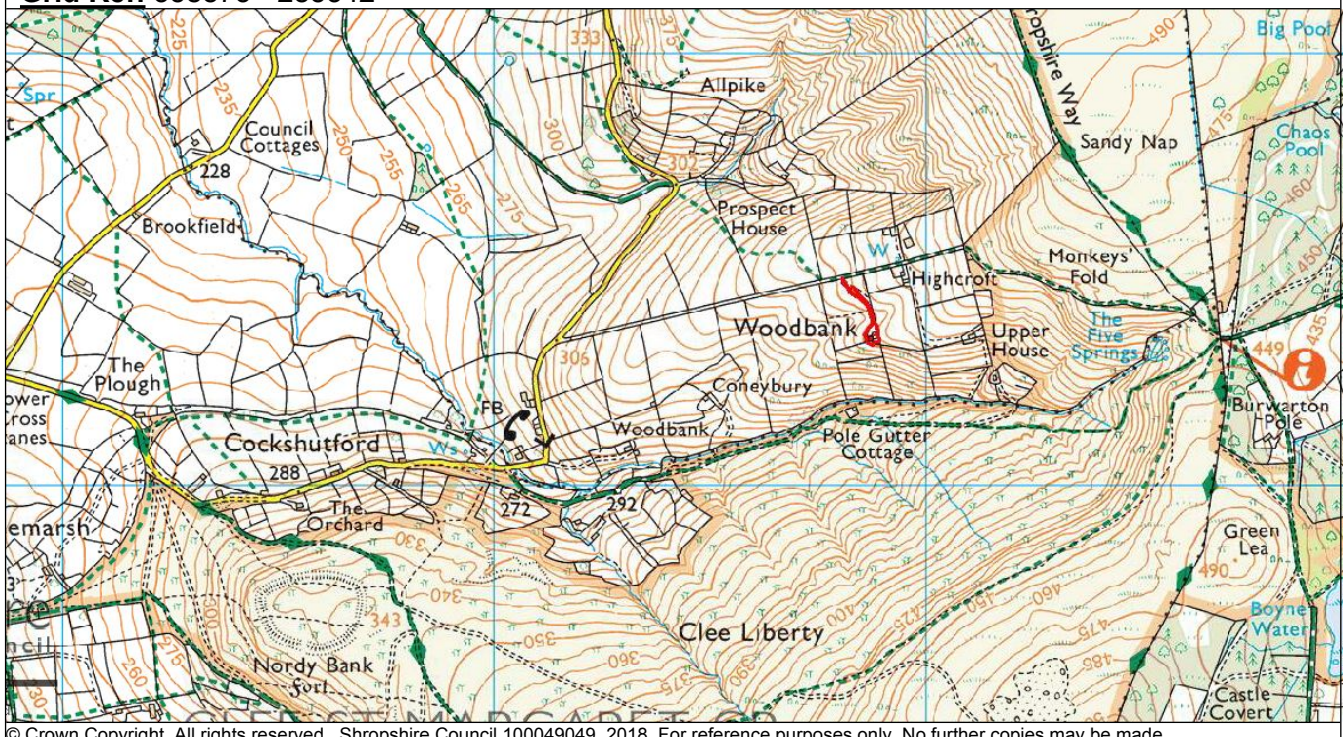
Responsible Officer: Tim Rogers

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

Summary of Application

Application Number: 18/00027/FUL	Parish:	Abdon And Heath
Proposal: Erection of detached garage and formation of turning area		
Site Address: Cartway Cottage Woodbank Abdon Craven Arms Shropshire		
Applicant: Mr And Mrs Graham		
Case Officer: Trystan Williams	email: planning.southern@shropshire.gov.uk	

Grid Ref: 358873 - 285342



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Recommendation: Grant permission subject to the conditions set out in Appendix 1

REPORT

1.0 THE PROPOSAL

1.1 This application seeks full planning permission to erect a domestic outbuilding on land adjacent to, but outside the curtilage of, the above dwelling house. It would comprise a three-bay garage with a stone façade and planted 'green' roof, cut into higher ground at the rear, and with open-sided, oak-framed lean-to storage areas at either end. Amended plans show:

- the main roof gently graded rather than flat so as to continue the slope of the hillside behind;
- a slightly lower front parapet;
- the pitch of the lean-to roofs lowered correspondingly and covered in dark green/grey standing seam metal sheeting rather than plain clay tiles;
- a tree-planted bund to be formed around a turning area in front the building; and
- the remainder of the land parcel omitted from the site boundaries.

2.0 SITE LOCATION/DESCRIPTION

2.1 The property enjoys a remote location on the western slopes of Brown Clee in the Shropshire Hills Area of Outstanding Natural Beauty (AONB), with access via a steep unmade track off a minor road north of Cockshutford. The house itself is a traditional stone cottage nestled in a wooded hollow. However the outbuilding would stand elevated on a steeply sloping paddock to the north, alongside a driveway off the aforementioned track, and where a roughly level parking/turning area has previously been carved out of the hillside. The surrounding countryside has a very loose scatter of further dwellings and farm buildings (including 'Highcroft' 100 metres to the northeast), but is primarily open pastureland, scrub and moorland, including Clee Liberty common beyond Cartway Cottage. There are extensive views southwest down the Corvedale, over the scheduled ancient monument of 'Nurdy Bank' Iron Age hill fort.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

3.1 In accordance with the Council's adopted 'Scheme of Delegation', the application is referred to the planning committee because the officer recommendation of approval is contrary to an objection from the Parish Council, and moreover Shropshire Council's Local Member and the chairman and vice chair of its planning committee consider that the issues raised warrant the full committee's consideration.

4.0 COMMUNITY REPRESENTATIONS

4.1 Consultee comments

4.1.1 Abdon Parish Council:

4/3/18 – objection:

The applicants' need for a domestic garage and store is understood, and it is also appreciated that the building's sunken form and green roof would help to minimise its visual impact, particularly if supplemented with tree planting. However councillors unanimously object to the choice of location, which is an elevated greenfield site distant from the cottage. This would necessitate considerable ground disturbance, especially given the building's excessive size. In turn these factors would result in a significant visual impact across a large part of the Corvedale, and also give rise to concerns over potential alternative uses for the building in the future.

7/9/18 – objection:

The site is part of an exceptionally attractive landscape within the AONB, and visible from vast areas. The proposed building is too large and too far from the house, making it unsuitable for ancillary domestic use. The applicants have made no compromises following previous comments, and councillors maintain their unanimous objection.

14/5/19 – objection:

The latest amendments still fail to address councillors' objections to the principle of the development in this location, and to the building's size. There are also concerns about the amount of excavation required, and hence ground stability.

4.1.2 Shropshire Hills AONB Partnership – comment:

No site-specific comments. However this indicates neither objection nor lack of objection to the application, and in reaching its decision the local planning authority must still satisfy its legal duty to take into account the purposes of the adjacent AONB designation, planning policies concerned with protecting the landscape, plus the statutory AONB Management Plan.

4.1.3 Shropshire Council Flood and Water Management – comment:

Any permission granted should include an 'informative' encouraging the use of sustainable surface water drainage systems.

4.1.4 Shropshire Council Rights of Way – no objection:

No comments

4.2 **Public comments**

4.2.1 Two local residents object on the following grounds:

- The building seems overly large and too far from the house for ancillary domestic use.
- There is ample room for a garage and store closer to the cottage, especially as the neighbour at Highcroft offers a 'land swap'.
- The application implies that the use of this field would change to domestic curtilage, which could open the door to further domestic development.
- This is a beautiful greenfield site on the upper slopes of Brown Clee, highly visible both close-up and in distant views.
- The shared access track is already in poor condition and has no turning point, and it is unclear who would fund the repair of any further damage caused by construction/delivery vehicles.

5.0 **THE MAIN ISSUES**

- Principle of development
- Scale, design and impact on landscape/historic environment
- Impact on residential amenity
- Access and highway safety

6.0 OFFICER APPRAISAL**6.1 Principle of development**

6.1.1 Additions to existing dwellings are acceptable in principle under the 'Type and Affordability of Housing' Supplementary Planning Document (SPD), which supports Core Strategy Policy CS11. Whilst this does not refer specifically to detached outbuildings, these pose no fundamental policy conflict provided they are solely for ancillary domestic use.

6.1.2 In this case, though the building would be large and distant from the house, it is understood that the applicants have a number of private vehicles and other equipment (including an oil tank) which they wish to garage/store securely, whilst the area in question is level and already used for domestic parking and turning. By contrast space within the curtilage itself, and the stretch of driveway down to it, are severely constrained by the topography, and an outbuilding there would likely be inaccessible in poor weather and to larger vehicles such as an oil tanker. Meanwhile the land apparently offered by the neighbour is not available to the applicant at present, and the Council must determine the proposal before it. The building's use solely for ancillary domestic purposes could be reinforced by condition, whilst the fact that the site outline now excludes the remainder of the paddock removes any possibility of further structures or domestic paraphernalia being established without formal approval.

6.2 Scale, design and impact on landscape/historic environment

6.2.1 The SPD expects domestic additions to be sympathetic to the size, mass, character and appearance of the original dwelling and to the local context. Meanwhile the National Planning Policy Framework (NPPF) requires great weight to be given to conserving landscape and scenic beauty in AONBs, and to conserving the significance of designated heritage assets, including any contribution made by their setting.

6.2.2 This scheme would undoubtedly have some visual impact given the site's elevation, the openness of the surroundings, the building's relative isolation and its size. Officers can therefore understand the Parish Council's, objectors' and Local Member's concerns, and have in fact made repeated attempts to secure amendments. Whilst the proposed siting, and indeed the building's scale and form, remain fundamentally unchanged, the tree-planted bund and sloping grass roof now shown would serve to blend the development into the natural contours, and to filter if not entirely screen it in longer-distance views. Except at very close range it would not protrude above the skyline, and moreover there would be some visual benefits to restoring the previous 'scarring' of the hillside here, and covering vehicles and equipment currently left out in the open. Thus, also taking into account the physical constraints to an alternative siting, on balance it is considered that the impact can be sufficiently mitigated with appropriate controls over the landscaping, as well as the facing stonework* and the colour of the garage doors.

(*In this respect the applicant has indicated that the façade could instead be weatherboarded, should Members prefer.)

6.2.3 Officers also acknowledge the reciprocal views between the site and Nordy Bank. However for similar reasons, and given the distance in-between, it is judged that the impact on the monument's setting would be very modest and would not amount to

demonstrable harm.

6.3 Impact on residential amenity

6.3.1 Core Strategy policy CS6 seeks to safeguard residential and local amenity. Here are no concerns in this regard given the proposed building's distance from and lower level than the nearest neighbouring dwelling (Highcroft).

6.4 Access and highway safety

6.4.1 Although the access route is particularly tortuous it is well established, and would not be altered. Any damage to the track's surface would be a civil matter and/or, since it is followed in part by a bridleway, subject to separate controls. Informatives would advise accordingly.

7.0 CONCLUSION

7.1 The development is acceptable in principle on the understanding that it would be solely for ancillary domestic use, and given the particular topographical constraints. Inevitably, on account of the exposed location and the building's size, there would be some landscape impact, but with appropriate mitigation this is also considered acceptable on balance. Despite there being some inter-visibility the setting of the Nordy Bank scheduled ancient monument would not be harmed, and furthermore there are no undue concerns regarding residential amenity or access. Overall, therefore, the application is considered to accord with the principal determining criteria of the relevant development plan policies and approval is recommended, subject to conditions to reinforce the critical aspects.

8.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL

8.1 Risk management

8.1.1 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

8.2.1 Article 8 of the First Protocol of the European Convention on Human Rights gives the right to respect for private and family life, whilst 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.

8.2.2 Article 1 also requires that the desires of landowners must be balanced against the impact of development upon nationally important features and on residents.

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

8.3 **Equalities**

8.3.1 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**

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

10. **Background**

Relevant Planning Policies:

Central Government Guidance:

National Planning Policy Framework

Shropshire Local Development Framework:

Core Strategy Policies:

CS5 - Countryside and Greenbelt
 CS6 - Sustainable Design and Development Principles
 CS7 - Communications and Transport
 CS11 - Type and Affordability of housing
 CS17 - Environmental Networks

SAMDev Plan Policies:

MD2 - Sustainable Design
 MD12 - Natural Environment
 MD13 - Historic Environment

Supplementary Planning Documents:

Type and Affordability of Housing

Relevant Planning History:

10/03099/FUL – Erection of extensions to dwelling incorporating existing attached outbuildings; formation of new vehicular access (permitted September 2010)

14/04985/FUL – Conversion and extension of existing attached outbuilding to form ancillary accommodation to dwelling (permitted March 2015)

11.0 ADDITIONAL INFORMATION

View details online:

<https://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=P1XZQPTDIOB00>

<p>List of Background Papers: Application documents available on Council website</p>
<p>Cabinet Member (Portfolio Holder): Cllr Gwilym Butler</p>
<p>Local Member: Cllr Cecilia Motley</p>
<p>Appendices: Appendix 1 – Conditions and Informatives</p>

APPENDIX 1 – CONDITIONS AND INFORMATIVES**STANDARD CONDITIONS**

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

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

2. The development shall be carried out in strict accordance with the approved, amended plans and drawings listed below.

Reason: To define the consent and ensure a satisfactory development in accordance with Policies CS5, CS6 and CS17 of the Shropshire Local Development Framework Adopted Core Strategy.

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

3. No above-ground development shall commence until samples/precise details of all external materials and finishes have been submitted to and approved in writing by the local planning authority. The development shall be completed in accordance with the approved details and retained thereafter.

Reason: To ensure that the external appearance of the development is satisfactory, and to help safeguard the visual amenity of the Shropshire Hills Area of Outstanding Natural Beauty, in accordance with Policies CS6 and CS17 of the Shropshire Local Development Framework Adopted Core Strategy.

4. Prior to their installation, details/samples of the external colour/finish of the garage doors shall be submitted to and approved in writing by the local planning authority. The development shall be completed in accordance with the approved details and retained thereafter.

Reason: To ensure that the external appearance of the development is satisfactory, and to help safeguard the visual amenity of the Shropshire Hills Area of Outstanding Natural Beauty, in accordance with Policies CS6 and CS17 of the Shropshire Local Development Framework Adopted Core Strategy.

5. The site shall be landscaped in accordance with the approved block plan and sectional drawing, and with precise details/schedules/specifications of the proposed tree planting, which shall be submitted to and approved in writing by the local planning authority prior to the first use of the new outbuilding. All planting and seeding shall be completed during the first planting and seeding seasons following the substantial completion or first use of the building, whichever is the sooner, and any trees or plants which, within a period of five years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: To ensure that the external appearance of the development is satisfactory, to help safeguard the visual amenities of the Shropshire Hills Area of Outstanding Natural Beauty, in accordance with Policies CS6 and CS17 of the Shropshire Local Development Framework Adopted Core Strategy.

CONDITIONS RELEVANT FOR THE LIFETIME OF THE DEVELOPMENT

6. The development shall only be used for purposes in connection with and ancillary to the occupation of the existing dwelling on the site (Cartway Cottage) as a single dwelling unit. At no time shall it be used for commercial or business purposes, or occupied as a separate independent dwelling.

Reason: To safeguard the residential amenities of the area, and prevent the establishment of a new dwelling or other potentially inappropriate use in the open countryside, in accordance with Policies CS5 and CS6 of the Shropshire Local Development Framework Adopted Core Strategy.

INFORMATIVES

1. Your attention is drawn specifically to the conditions above which require the Local Planning Authority's prior approval of further details. In accordance with Article 27 of the Town and Country Planning (Development Management Procedure) Order 2015 a fee (currently £34) is payable to the Local Planning Authority for each request to discharge conditions. Requests are to be made on forms available from www.planningportal.gov.uk or from the Local Planning Authority.

Where conditions require the submission of details for approval before development commences or proceeds, at least 21 days' notice is required in order to allow proper consideration to be given.

Failure to discharge conditions at the relevant stages will result in a contravention of the terms of this permission. Any commencement of works may be unlawful and the Local Planning Authority may consequently take enforcement action.

2. This planning permission does not authorise the obstruction, realignment, reduction in width, resurfacing or other alteration of any public right of way, temporarily or otherwise. Before carrying out any such operation you should consult Shropshire Council's Outdoor Recreation Team and obtain any closure order or further consents which may be required.
3. This consent does not convey any right of vehicular access over any public right of way, and it is a road traffic offence to drive a motor vehicle on a public footpath, bridleway or restricted byway without lawful authority. Any person intending to use a right of way for vehicular access should first satisfy themselves that such a right exists, if necessary by taking legal advice.
4. This planning permission does not authorise any right of passage over, or the obstruction, realignment, reduction in width, resurfacing or other alteration of, any private driveway or right of access. Before carrying out any such operation you should first satisfy yourself that you have the necessary consent from the landowner(s) and any other affected party, if necessary by taking legal advice.

5. In order to control/attenuate surface water at source and avoid increasing the risk of flooding at the site or elsewhere, the incorporation of sustainable drainage systems (SuDS) such as soakaways designed in accordance with BRE Digest 365, water butts, rainwater harvesting, permeable paving, attenuation and grey water recycling should be considered.
6. In arriving at this decision the Council has used its best endeavours to work with the applicant in a positive and proactive manner to secure an appropriate outcome as required in the National Planning Policy Framework Paragraph 38.



Committee and date

South Planning Committee

24 September 2019

Development Management Report

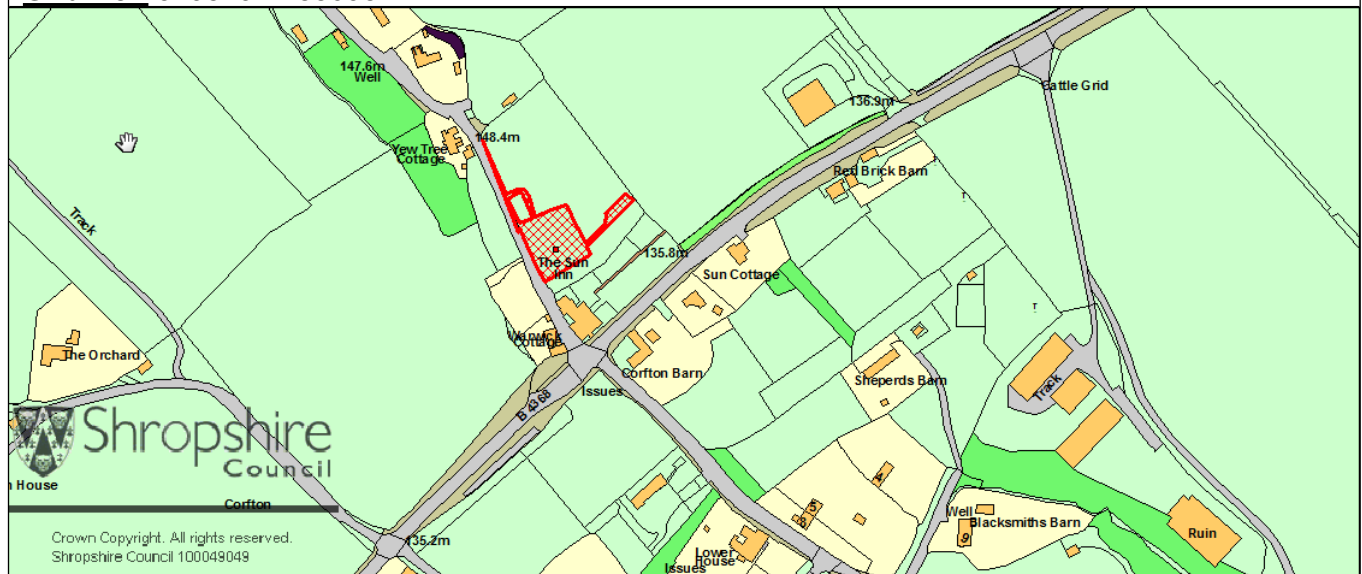
Responsible Officer: Tim Rogers

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

Summary of Application

Application Number: 18/03863/OUT	Parish:	Diddlebury
Proposal: Outline application for the erection of detached cottage and garage to include means of access		
Site Address: Proposed Dwelling To The East Of Corfton Shropshire		
Applicant: Mr R Burgoyne		
Case Officer: Heather Owen	email: planning.southern@shropshire.gov.uk	

Grid Ref: 349549 - 285098



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

REPORT

1.0 THE PROPOSAL

- 1.1 This application seeks outline planning permission for the erection of a detached dwelling and garage and formation of new vehicle access.
- 1.2 Appearance, landscaping, layout and scale are all reserved for consideration under a separate reserved matters application should outline planning permission be granted, although an indicative block plan and site section has been provided.
- 1.3 During the process of this application, the applicants agents amended the site plan which relocated the proposed access further east along the lane and amended slightly the location of the drainage soakaway.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 The application site comprises of a sloping field to the north side of The Sun Inn in Corfton. The site is accessed off the north side of the B4368 via a single width unclassified highway which give access to a small group of properties known as Corfton Batch, before merging with public bridleway track.
- 2.2 The site is of a sloping nature, set at a higher ground level than the highway, with the edge built up by a bank of rough stone walling, covered with vegetation and above which lies mature boundary hedging. To the north/north-west of the site lies a group of residential properties. The site is within the Shropshire Hills Area of Outstanding Natural Beauty (AONB).
- 2.3 A previous application (10/00835/FUL) for a dwelling on the northern upper section of this field was withdrawn in April 2010 with no decision being made.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 The Parish Council raise views contrary to officer recommendation. This case has been discussed with the Local Member and the Chair and Vice Chair of the Southern Planning Committee where it was determined that due to its sensitive location of the site the application requires consideration at planning committee.

4.0 Community Representations

- 4.1 Consultee Comments

Note: As mentioned above during the process of this application the applicants agent submitted amended plans, as such a full re-consultation was carried out. The consultee comments set out below include both the original comments received and any comments to the amended plans where they differ to the original comments.

- 4.1.1 Diddlebury Parish Council - 09/08/2019 - Response to amended site and block plans: Objection:

Diddlebury Parish Council has considered this amended application. The Parish Council does not support this application, and objects to it, for the following reasons:-

1. Whilst acknowledging that Highways on 01.08.19 supported the revised siting of the access drive on improved safety grounds (see 30/10/18 Highways comments on safety) it still does not meet DPC's original objection, namely that it will involve the destruction of part of the hedge of the ancient hollow way serving Corfton Bache.

2. The other objections the parish council raised in its response of 30th September 2018 still remain, namely:

- The development has no local support
- The proposed local open market planning applications far exceed the original SAMDev/Place Plan criteria for Corfton of 1 – 5 new dwellings (unilaterally increased to 10 by Shropshire Council) and now stands at 16 houses approved by planning applications.

3. Since DPC's initial response of 30th September 2018 DPC was asked at a meeting on 24th October 2018 to consider a Petition produced by 75% of the Corfton residents in which they ask that no more housing, other than affordable housing, be sanctioned in Corfton.

At DPC's meeting on 23rd January 2019 a motion was unanimously passed that DPC will formally request that Corfton is withdrawn from the Community Cluster and becomes Open Countryside for planning purposes; that DPC will not support further applications for new housing in Corfton and that DPC will submit a response to the SC Local Plan Review - Preferred Sites Consultation which reflects this decision.

Diddlebury Parish Council – Response on original plans: Objection:

Diddlebury Parish Council considered this application at its meeting last night.

In reaching its decision on this application, the parish councillors took into account the contents and nature of the twelve varied objections to this application in the public comments section of the portal, (one of which was neutral), and the comments of the various statutory bodies.

After carefully weighing all the views and evidence, the parish council voted, by a majority, to object to this application for the following reasons:

- There is no local support for this development
- The amount of open market development agreed in the Parish Plan for Corfton has already been considerably exceeded
- The proposed access to the development is considered to be potentially dangerous and would involve irrevocable destruction to part of the wall and hedge of the ancient hollow way serving the Corfton Bache community.

4.1.2 SUDS: Re-consultation Comments: Recommend condition regarding surface and foul water drainage and informatives regarding sustainable drainage systems.

SUDS: Original comments: Recommend informative regarding design of sustainable drainage systems.

4.1.3 Shropshire Hills AONB: Standing advice neither objecting or not objecting to the scheme, advise that it is the duty of the planning authority to take into account the planning policies regarding the AONB and the AONB Management Plan.

4.1.4 SC Affordable Houses: If the development is policy compliant then whilst the Council considers there is an acute need for affordable housing in Shropshire, the Councils housing needs evidence base and related policy pre dates the judgment of the Court of Appeal and subsequent changes to the NPPG, meaning that on balance and at this moment in time, then national policy prevails and no affordable housing contribution would be required in this instance.

4.1.5 SC Ecology: No further comments on amended plans.

SC Ecology: Response to original plans: No objection, recommend condition relating to landscaping, external lighting and informatives relating to nesting birds.

4.1.6 SC Highways: Response to amended plans: No objection - subject to the development being carried out in accordance with the approved details, recommended condition regarding the gradient of the access and informatives on works to highways.

SC Highways: Response to original plans: No objection, recommend condition requiring details of construction of access, levels and visibility splays.

4.2 Public Comments

4.2.1 This application as originally submitted was advertised for 21 days via site notice (expired 21.09.2018) and directly in writing to 5 neighbouring properties (expired 20.09.2018). Re-consultation was carried out on the amended plans directly in writing to all original properties written too and all those who had responded to the original publication (expired 16th August 2019)

4.2.2 Objections from 9 separate households have been received on the original plans:

- No need for more open market housings – in recent years 13 houses have been granted planning permission for Corfton, as opposed to the 5 specified in the current place plan.
- The applicant already has permission for 2 houses.
- The scheme is neither a conversion or infilling as required by the SAMDev policy.
- This scheme opens the ‘flood gates’ for more properties all over the field.
- The site is AONB, it should be protected for the benefit for future generations.
- A previous applications for a similar scheme with comparable access was

objected to by the Shropshire Hills AONB in April 2010 – These reasons are still valid.

- Access – Why can't the existing access to the field not be used?
- The new access would mean demolishing a large section of wall (around 27m at least would need removing), bank and several trees.
- Harm to an historic hollow way to Diddlebury Common.
- Highways Safety – The access is on the steepest part of the lane where cars speed down.
- The Junction of this lane with the B4368 is already perilous without adding additional traffic.
- The Bridleway which runs up and down Corfton Bache is well used and the additional traffic would cause disruption.
- Loss of wildlife due to removal of hedging and banks.
- Loss of visual aesthetics through removal of wall.
- The drainage does not comply with new build standards and the soakaway location appears to drainage into one of the other approved buildings (ref - 16/04550)
- The information provided with this application (albeit outline) is totally inadequate on which to base any objective opinion on the dwelling proposed. Outline plans, elevations, choice of materials, means of disposal of storm and foul water, landscaping proposals, mitigation plan for damage to ecology - none of this essential information has been submitted.
- Note that that previous application to convert a barn on the applicants land was refused.

4.2.3 1 comment received:

Request that if permission is granted it includes trees are planted between The Sun Inn, its brewery and the proposed dwelling to reduce noise.

4.2.4 Re-consultation:

Objections from 8 separate households have been received to the amended plans:

- Corfton has already exceeds the authority guideline for a maximum of 5 new houses.
- Further development would be unsustainable,
- The area is within the AONB and should not be built on.
- Potential for further development within the area.
- Access implies that no hedges will be cut down, but this is what would need to happen.
- The loss of hedges, banks and the naturally formed stone wall would impact wildlife and destroy the aesthetics of the area.
- Corfton Bache road is historically significant and allowing this access would impact this.
- Corfton Batch road is a well-used bridleway, the extra traffic will cause disruption.
- The amended scheme makes things worse – as even more of the ancient hollow way would be destroyed.
- An independent survey on the impact on nature and amenity value should be undertaken.
- Access should be via the main road, past the developers existing new housing or via the existing field access.

- Since the submission of this application a petition has been sent to Shropshire Council from Corfton residents opposing the grant of any further permissions, this is supported by the Parish Council.
- Any argument that Corfton might fail to deliver the required number of housing by 2026 is flawed – Corfton is already overloaded with permissions for new housing.
- These superficial adjustments to the position of the property, and the access onto Corfton Bache, does not reduce its detrimental impact on the local community, and risks to residents, walkers, horse riders and cyclists who enjoy this renowned route. It also still destroys ancient walls and hedging in a designated AONB.
- More detailed outline plans, elevations, choice of materials, etc, should be provided. There is no drawn indication as to how stormwater will be disposed of (other than a tick against soakaway in the planning statement), and foul water disposal is noted and shown on the site layout plan to be via a septic tank; we understood that current regulations would require a package treatment plant.
- Neither landscaping proposals nor a mitigation plan for damage to ecology, has been submitted, both of which are essential information.
- The new drive would provide future entrances to one or even two more dwellings on what is currently an agricultural field.
- All the objections previously submitted still apply.
- The dwelling is not classed as 'affordable'
- There are no community benefits to this development.
- There is no explanation for these amendments – cannot see that vehicles would be able to turn left and down the lane.
- The plans are misleading and indicate possible turning opposition yew tree cottage – the highway does not extend to the north as far as the grey area shown on the plan.
- There are three houses under construction within Corfton itself and preliminary site work on another (18/02934/FUL) had started. That means that the construction of four houses (80% of the relevant number) is already in hand.
- While it is noted that the Highways Committee has supported the application, this is on the grounds of "safety", this comment takes no account of the effect on the local environment.
- Corfton is a historical rural hamlet and should not be changed by developers into the equivalent of a suburban housing estate.
- Drainage concerns - The planning (18/03510/FUL) has its drainage discharging in to my garden (grey water) and car park (storm water) as per planning of this application. (18/03863/OUT) is close to (18/03510/FUL) and my fear is the grey water and the storm water will end up in the drains in my garden and car park, overwhelming the drains in my garden ending up on the pubs car park and on to the road.

5.0 THE MAIN ISSUES

Principle of development
 Siting, scale and design of structure
 Visual impact and landscaping
 Biodiversity

Highway Safety
Drainage
Residential Amenity
Affordable Housing Contribution

6.0 OFFICER APPRAISAL

6.1 Principle of development

- 6.1.1 Under section 38(6) of the Planning and Compulsory Purchase Act 2004, all planning applications must be determined in accordance with the adopted development plan unless material considerations indicate otherwise. The development plan for Shropshire is the Council's Adopted Local Development Framework Core Strategy, the associated 'Type and Affordability of Housing' Supplementary Planning Document (SPD) and the adopted Site Allocations and Management of Development (SAMDev) Plan.
- 6.1.2 For new housing development, Core Strategy Policies CS1, CS3, CS4, CS5 and CS11 seek to steer new housing to sites within market towns, other 'key centres' and certain named villages ('Community Hubs and Clusters') as identified in policy CS3; CS4 and set out in detail in the Council's SAMDev Plan, policy MD1.
- 6.1.3 Corfton is identified as a component of a Community Cluster alongside Bache Mill, Boulton, Broncroft, Middlehope, Peaton, Seifton (Great/Little) Sutton and Westhope under SAMDev Policies MD1 and S7. The allocation of the settlement as a community cluster implies that the location in general is sustainable and this carries significant weight (the NPPF states that proposals which accord with an up-to-date development plan should be approved without delay).
- 6.1.4 The settlement policy for this cluster, S7, gives a guideline of around five additional dwellings, and no more than ten, in each of the Cluster settlements by 2026, and besides conversion schemes the intention is for these to comprise infill development on suitable small-scale 'windfall' sites.
- 6.1.5 Since there is no predefined development boundary around Corfton the question of whether or not specific schemes would constitute infilling is a matter for judgment in each case. However the explanatory text accompanying Core Strategy Policy CS4 confirms that, in order to avoid fragmented development, new housing should be located within the settlements themselves and not on adjoining land or in the countryside in-between.
- 6.1.6 According to the Council's 'Type and Affordability of Housing' Supplementary Planning Document (SPD), a settlement is characterised partly by the relationship between its various properties, its limits being defined by where that relationship peters out. The SPD also acknowledges that this varies from settlement to settlement, depending on the number of houses and their proximity to each other.
- 6.1.7 This particular proposal looks to construct a dwelling on the southern part of an existing field. To the south lies the existing public house of The Sun Inn and there is an existing cottage to the south east, albeit separated by the lane. There are no properties along the east side of the site or directly opposite the road on the west,

however it is noted there is a further group of properties to the north/north west side of the site and as such and bearing in mind the other locations within Corfton which have been accepted as infill it is considered on balance that this site would represent infill.

6.1.8 Regarding housing numbers, the Council's Five Year Housing Land Supply Statement provides the most recent formal data available and confirms as of 31st March 2018, across the cluster there has been 1 completion and 20 sites with planning permission. As previously noted within this report the settlement policy for this settlement states that each of the settlements are expected to deliver on suitable small site or through conversions around 5 additional dwellings (not exceeding 10). It is acknowledged that since the adoption of the SAMDev plan, Corfton has experienced the brunt of the planning permissions granted across this Cluster, with records indicating of the 20 planning permissions there is permission for 13 dwellings being within Corfton itself. Both the Parish Council and neighbour objections bring to attention to a petition submitted to Planning Policy in response to the current local plan review consultation on preferred sites. That petition signed by 31 residents asks for the removal of Corfton from the Community Cluster given the number of permissions for new dwellings is already double that expected within the whole plan period. The Local Plan review is still at the early stages and a recommendation in response to the local community request regarding Corfton has yet been made. Due to the early stages of the local plan review only a limited weight can be given to this aspect and this planning application has to be considered in accordance with the current adopted policy.

6.1.9 Turning back to the issue of the amount of approved development within Corfton. SAMDev Policy MD3 explains that the settlement housing guidelines are not absolute maxima, and this has been emphasised in appeal decisions elsewhere. SAMDev policy at MD3.2 provides further guidance on how decisions should be determined in such circumstances where development would result in the number of completions plus outstanding permissions providing more dwellings than the guideline. The policy requires decisions to have regard to:

- i) *The increase in number of dwellings relative to the guideline; and*
- ii) *The likelihood of delivery of the outstanding permissions; and*
- iii) *The benefits arising from the development; and*
- iv) *The impacts of the development, including the cumulative impacts of a number of developments in a settlement; and*
- v) *The presumption in favour of sustainable development.*

6.1.10 On applying the criteria listed in policy MD3.2, it is acknowledged that the scheme if permitted would add to the number of permissions granted within the cluster as a whole which if all delivered would increase the number of dwellings within Corfton above the cluster guideline. Of the 13 permissions identified 1 dwelling has been completed (16/04746/FUL) and since the publication of the Five year land supply, it appears work has begun on at least three other dwellings (16/04173/REM, 18/03510/FUL and 18/02934/FUL). Of the remaining planning permissions it should be noted that outline planning permission 16/02751/OUT has now expired, with the deadline for submission of a reserved matters application having passed. This brings the number of outstanding permissions within Corfton itself to 12, although it is accepted that should this permission be granted it would take the total figure

back to 13 dwellings.

- 6.1.11 The development would contribute to the housing stock within the county as a whole and contribute to maintaining a five-year supply. It would provide some local benefit in terms of construction work and additional residents who in turn will spend money within the wider local area, albeit it is acknowledge that for small scale developments these benefits are small.
- 6.1.12 Corfton has been identified as an appropriate location for residential development and the Local Planning Authority is satisfied that this designated has been made taking into account the long term sustainability of the settlement and county as a whole. Granting this permission would add by 1 to the number of dwellings above the 10 guideline limit, giving a total of 3 dwellings above the guideline: Such a number would not be considered as delivering unsustainable development which may result in disproportionate car usage or excessive energy consumption in the context of the Community Cluster policy.
- 6.1.13 On balance it is considered that, while the settlement guideline with respect to dwelling numbers would be exceeded, the above material planning considerations are sufficient to conclude there is no in-principle planning policy objection to the proposed development of this site for one dwelling. The acceptability or otherwise of the proposal therefore turns upon the detailed matters assessed below.

6.2 Visual impact, landscaping and Shropshire Hills AONB

- 6.2.1 Both national and local plan policy seek to ensure developments are of a high quality of design which seeks to create distinctive places. At paragraph 126 the NPPF acknowledges that the level of design detail and degree of prescription should be tailored to the circumstances of each place. Core Strategy Policy CS4 requires development in Community Clusters to be of a scale and design sympathetic to the character of the settlement and its environs, and to satisfy the more general design requirements under Policy CS6 and SAMDev Policy MD2. These expect all development to reinforce local distinctiveness in terms of building forms, scale and proportion, heights and lines, density and plot sizes, as well as materials and architectural detailing.
- 6.2.2 Part 15 of the NPPF at paragraph 172 states that great weight should be given to conserving landscape and scenic beauty of Areas of Outstanding Natural Beauty. Policies CS17 and MD12 support these national policies seeking to protect and enhance the diversity, high quality and local character of Shropshire's natural, built and historic environment.
- 6.2.3 It is acknowledged that the layout, scale and appearance of the dwelling and detached garage are reserved matters in this case, planning authorities can request additional information where there is room for doubt that a development can be designed in a way which would actually be acceptable, for example because the location is visually sensitive. Meanwhile applicants can choose to supply illustrative plans to amplify their intentions, and certainly if such plans show desirable features and it is reasonable to do so, these can be secured through a specific planning condition.

- 6.2.4 Here, without prejudice to the committee's ultimate decision on the principle of developing this site, officers sought clearer assurance that the scale of the house would not cause undue landscape harm, bearing in mind the elevated and sloping levels. In response the applicants agent has submitted an indicative sectional drawings demonstrating how the site and proposed access could sit within the street scene. The drawing indicates a dormer property and shows how a dwelling of that design could sit between the levels of the properties to the north of the site and that of the Sun Inn at the South. The property would be set within the lower part of the sloping field and as such would be set at a lower height than the properties to the north, which are arguably in a more elevated location set further up the slope. The sectional drawing also however indicates that the property would stand higher than the road and the properties towards the bottom on the slope, namely The Sun Inn and Warwick Cottage. However it should be borne in mind this is also true of some of the other properties already in existence along this lane and in the wider context of other properties in more exposed locations on the fringes of the village and elsewhere along the foot of Wenlock Edge. The existing mature tree and roadside hedging would also filter some of the views of the proposed property and where glimpses of the development are possible the main 'B' road the property would be view in context of existing buildings. Other aspects such as materials and detailing, and also landscaping of the plot, would be subject to agreement at the reserved matters stage, however to mitigate the visual impact it is considered that a condition should be included that restricts the height of any proposed house to either single storey, or with any first-floor accommodation to be within the roof only.
- 6.2.5 Particular objections have been raised with regards to the visual impact of the formation of a new access and the impact on the character of the lane onto which the access would open onto. It is acknowledged that the formation of a new access here would result in a visual change to the lane due to the need to remove a part of the boundary hedging, bank and stone walling to form the opening. However when assessing the impact of this part of the development the committee members should take into the planning balance that permitted development rights do allow for the formation of a means of access onto an unclassified road where required in connection with any other permitted development set out within the GPDO, this can include formation of a hardstanding for example. The stone wall is not a listed structure and although appears to be of local interest does not appear to be regularly maintained and is not a highly visible feature within the lane, being currently screened with vegetation. The visual changes as a result of the formation of the access would be limited to the lane itself rather than the wider landscape and on balance it is considered the access, whilst would change the character of the lane would not do so to a significant degree to justify refusal.
- 6.2.6 Overall it is accepted that inevitably there would be some landscape impact as a result of developing this site, however when the above is considered in the planning balance it is judged that it is possible to build a dwelling without significant detriment to the character of the Corfton, the visual amenity of character and natural beauty of this part of the Shropshire Hills AONB.

6.3 Biodiversity

- 6.3.1 National guidance gives a duty to public bodies (including Local Planning Authorities) to ensure development does not harm protected species or its habitat.

The National Planning Policy Framework (NPPF) emphasises that Local Planning Authorities should ensure development contributes to and enhances the natural and local environment including minimising impacts on biodiversity and providing net gains where possible.

- 6.3.2 The Councils Ecologist has considered the application whom considers no surveys are required in this instance and is content that ecological interests can be safeguarded and mitigated by conditions to provide additional landscaping enhancement and informatives relating to general wildlife protection during development.

6.4 Highway Safety

- 6.4.1 Paragraph 109 of the NPPF states that developments should only be prevented or refused on highway grounds where there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 6.4.2 Core Strategy policy CS6 seeks to ensure that proposals likely to generate significant levels of traffic be located in accessible locations, where opportunities for walking, cycling and use of public transport can be maximised and the need for car based travel reduced.
- 6.4.3 The scheme seeks to form a new access onto the unclassified road which leads to Corfton Bache. The amended plans relocated the access from the originally proposed location further up the lane to enable the provision of a 33m x 2.4m visibility splay. Objection is raised to the intensification of the use of the lane as a result of this development and the impact on the safety of road users including pedestrians and horse riders, given the lane leads to a public bridleway. The Councils Highways Team have considered the application and acknowledge that this lane is restricted in width, however it is lightly trafficked and the additional movements associated with the proposed dwelling would not have a significantly adverse impact on the surrounding Highway network or compromise highways safety.
- 6.4.4 Third party comments suggest the use of the existing field gate in the south corner of the site could be used as access to the proposed dwelling. However the Councils Highways team do not support the use of this access as it is not considered that sufficient visibility could be provided to form a satisfactory access.
- 6.4.5 Due to the narrow nature of the surrounding highway network it is also considered that a Construction Management Statement should be provided to ensure that vehicles associated with the construction works are managed in an appropriate way to prevent congestion within the surrounding area and to protect amenity.

6.6 Drainage

- 6.6.1 Core Strategy policy CS18 relates to sustainable water management and seeks to ensure that surface water will be managed in a sustainable and coordinated way, with the aim to achieve a reduction in existing runoff rate and not to result in an increase in runoff.

6.6.2 The Council's Flood and Water Management Team have advised that details of the proposed surface water drainage can be conditioned and submitted for approval at the reserved matters stage in the event of outline planning permission being given. They do not envisage any unresolvable technical issues to achieving satisfactory drainage here for the number of residential units proposed.

6.7 Residential Amenity

6.7.1 Core Strategy policy CS6 seeks to safeguard residential and local amenity. It would be at the reserved matters stage following any grant of outline planning permission, when details of the layout, scale and appearance of the development are available, that the impact of the proposed development upon the residential amenities of existing properties in the vicinity can be fully considered and to ensure that no undue harm would arise.

6.8 Affordable Housing Contribution

6.8.1 The Council's Core Strategy Policy CS11 and a related Supplementary Planning Document require all market housing schemes to make an affordable housing contribution (usually a one-off payment in lieu of on-site provision where a small number of dwellings is proposed). However this requirement is now effectively superseded by the revised NPPF published in July 2018 and revised February 2019, which states categorically (at Paragraph 63) that affordable housing provision should not be sought in connection with small-scale developments. It must therefore be accepted that the Council's policies in this respect are out-of-date and can no longer be given significant weight, meaning no affordable housing contribution should be sought here.

7.0 CONCLUSION

7.1 The application site is situated within the settlement of Corfton, part of a nominated community cluster where the principal of open market housing development acceptable on suitable sites in accordance with policies CS4 and MD1. The application site is considered to represent infill forming part of the settlement of Corfton and on balance it is judged that the addition of one further dwelling in this settlement would not cause demonstrable harm to the settlement character in terms of the number of new houses within the area.

7.2 The precise, layout, scale and design of the dwelling would be addressed at a reserved matters stage, and whilst it has to be accepted that there would be some impact on landscaping the indicative drawings demonstrate how the site could potentially accommodate a dwelling without resulting in significant harm to the character of Corfton or the wider landscape and natural beauty of the AONB. There are no objections raised by technical teams regarding highway safety, ecology or drainage.

7.3 Overall on balance it is considered that the application accords with the principal determining criteria of the relevant development plan policies and it is recommended that the application is approved

8.0 Risk Assessment and Opportunities Appraisal

8.1 Risk Management

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

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

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

8.2 Human Rights

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

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

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

8.3 Equalities

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in Planning Committee members' minds under section 70(2) of the Town and Country Planning Act 1990.

9.0 Financial Implications

There are likely financial implications if the decision and / or imposition of

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

10. Background

Relevant Planning Policies

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

Core Strategy and SAMDev Plan Policies:
 CS1 - Strategic Approach
 CS4 - Community Hubs and Community Clusters
 CS6 - Sustainable Design and Development Principles
 CS9 - Infrastructure Contributions
 CS11 - Type and Affordability of housing
 CS17 - Environmental Networks
 CS18 - Sustainable Water Management

MD1 - Scale and Distribution of Development
 MD2 - Sustainable Design
 MD3 - Managing Housing Development
 MD12 - Natural Environment

Settlement: S7 - Craven Arms

SPD Type and Affordability of Housing

RELEVANT PLANNING HISTORY:
 None.

11. Additional Information

View details online:

<https://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=details&keyVal=PDMAIETDFS200>

List of Background Papers
Cabinet Member (Portfolio Holder) Councillor Gwilym Butler
Local Member Cllr Cecilia Motley

Appendices

APPENDIX 1 - Conditions

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

1. Approval of the details of the design and external appearance of the development, layout, scale, and the landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

Reason: The application is an outline application under the provisions of Article 5 of the Development Management Procedure Order 2015 and no particulars have been submitted with respect to the matters reserved in this permission.

2. Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.

Reason: This condition is required to be imposed by Section 92 of the Town and Country Planning Act, 1990.

3. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Reason: This condition is required to be imposed by Section 92 of the Town and Country Planning Act, 1990.

4. The first submission of reserved matters shall include a landscape plan. The plan shall include:
 - a) Planting plans, creation of wildlife habitats and features and ecological enhancements (e.g. integrated bat and bird boxes, hedgehog-friendly gravel boards and native species hedge planting);
 - b) Written specifications (including cultivation and other operations associated with plant, grass and wildlife habitat establishment);
 - c) Schedules of plants, noting species (including scientific names), planting sizes and proposed numbers/densities where appropriate;
 - d) Native species used are to be of local provenance (Shropshire or surrounding counties);
 - e) Details of trees and hedgerows to be retained and measures to protect these from damage during and after construction works;
 - f) Implementation timetables.

The plan shall be carried out as approved, unless otherwise approved in writing by the Local Planning Authority.

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

5. The site shall be developed with one single storey dwelling; if first floor accommodation is to be provided it shall be within the roof space only.

Reason: To preserve the visual amenities of the area.

6. With the exception of the application site boundary outlined in red and the access proposal nothing in this permission shall be construed as giving approval to the details shown on the drawings accompanying this application, as such details are intended for illustration purposes only.

Reason: To define the permission and to retain planning control over the details of the development.

CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

7. Prior to the commencement of the development, a Construction Method Statement shall have been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period.

Reason: This detail is required prior to commencement to avoid congestion in the surrounding area and to protect the amenities of the area.

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

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

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

9. Prior to the first occupation of the dwelling hereby permitted, the access, turning and parking areas shall be laid out in accordance with details of their design and surfacing which have first been approved in writing by the Local Planning Authority.

Reason: To ensure a satisfactory means of access to the highway and to safeguard the visual amenities and rural character of the area.

10. If non permeable surfacing is used on the new access, driveway and parking area or where any part of the new access and drive slopes toward the highway, a drainage system to ensure that no surface water runoff from the new access run onto the highway should be submitted approval in writing by the Local Planning Authority before the construction and layout of the access and drive. The drainage system shall be installed in full accordance with the approved details prior to the first occupation of the dwelling.

Reason: To ensure satisfactory drainage of the site and to avoid flooding onto the highway.

11. Prior to the erection of any external lighting on the site, a lighting plan shall be submitted to and approved in writing by the Local Planning Authority.

The lighting plan shall demonstrate that the proposed lighting will not impact upon ecological networks and/or sensitive features, e.g. bat and bird boxes. The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust's Artificial lighting and wildlife: Interim Guidance: Recommendations to help minimise the impact artificial lighting (2014).

The development shall be carried out strictly in accordance with the approved details and thereafter retained for the lifetime of the development.

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

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

12. The gradient of the access from the highway carriageway shall not exceed 1 in 24 for a distance of 6m and thereafter the gradient of the drive shall not exceed 1 in 10.

Reason: To provide a safe access to the development in the interests of highway safety.

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

Reason: To ensure a satisfactory form of access is provided in the interests of highway safety.

Informatives

1. SURFACE WATER

The use of soakaways should be investigated in the first instance for surface water disposal. Percolation tests and the sizing of the soakaways should be designed in accordance with BRE Digest 365.

Surface water should pass through a silt trap or catchpit prior to entering the soakaway to reduce sediment build up within the soakaway.

Should soakaways are not feasible, drainage calculations should limit the discharge rate from the site equivalent to 5.0 l/s runoff rate should be submitted for approval. The attenuation drainage system should be designed so that storm events of up to 1 in 100 year + 35% for climate change will not cause flooding of any property either within the proposed development or any other in the vicinity.

URBAN CREEP

Urban creep is the conversion of permeable surfaces to impermeable over time e.g. surfacing of front gardens to provide additional parking spaces, extensions to existing buildings, creation of large patio areas.

The appropriate allowance for urban creep must be included in the design of the drainage system over the lifetime of the proposed development. The allowances set out below must be applied to the impermeable area within the property curtilage:

Residential Dwellings per hectare	Change allowance % of impermeable area
Less than 25	10
30	8
35	6
45	4
More than 50	2
Flats & apartments	0

Note: where the inclusion of the appropriate allowance would increase the total impermeable area to greater than 100%, 100% should be used as the maximum.

'Curtilage' means area of land around a building or group of buildings which is for the private use of the occupants of the buildings.

FOUL DRAINAGE

British Water 'Flows and Loads: 4' should be used to determine the number of persons for the proposed development i.e. for a 4 bedroom dwelling, the population equivalent should be 6 and the sizing of the septic tank and drainage fields should be designed to cater for a minimum of 6 persons and in accordance with the Building Regulations H2 Paragraph 1.18. These documents should also be used if other form of treatment on site is proposed.

2. Nesting bird informative

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

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

All vegetation clearance, tree removal, scrub removal, conversion, renovation and demolition work in buildings, or other suitable nesting habitat, should be carried out outside of the bird nesting season which runs from March to August inclusive.

If it is necessary for work to commence in the nesting season then a pre-commencement inspection of the vegetation and buildings for active bird nests should be carried out. If vegetation or buildings cannot be clearly seen to be clear of nests then an appropriately qualified and experienced ecologist should be called in to carry out the check. Only when there are no active nests present should work be allowed to commence. No clearance works can take place with 5m of an active nest.

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

Landscaping informative

Where it is intended to create semi-natural habitats (e.g. hedgerow/tree/shrub/wildflower planting), all species used in the planting proposal should be locally native species of

local provenance (Shropshire or surrounding counties). This will conserve and enhance biodiversity by protecting the local floristic gene pool and preventing the spread of non-native species.

3. Mud on highway

The applicant is responsible for keeping the highway free from any mud or other material emanating from the application site or any works pertaining thereto.

No drainage to discharge to highway

Drainage arrangements shall be provided to ensure that surface water from the driveway and/or vehicular turning area does not discharge onto the public highway. No drainage or effluent from the proposed development shall be allowed to discharge into any highway drain or over any part of the public highway.

Works on, within or abutting the public highway

This planning permission does not authorise the applicant to:

- construct any means of access over the publicly maintained highway (footway or verge) or
- carry out any works within the publicly maintained highway,
- authorise the laying of private apparatus within the confines of the public highway including any new utility connection, or
- undertaking the disturbance of ground or structures supporting or abutting the publicly maintained highway the publicly maintained highway.

The applicant should in the first instance contact Shropshire Councils Street works team. This link provides further details

<https://www.shropshire.gov.uk/roads-and-highways/road-network-management/application-forms-and-charges/section-50-street-works-licence/>

Please note: Shropshire Council require at least 3 months' notice of the applicant's intention to commence any such works affecting the public highway so that the applicant can be provided with an appropriate licence, permit and/or approved specification for the works together and a list of approved contractors, as required.

4. In arriving at this decision Shropshire Council has used its best endeavours to work with the applicant in a positive and proactive manner to secure an appropriate outcome as required in the National Planning Policy Framework, paragraph 38.

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Committee and date
 South Planning Committee
 24 September 2019

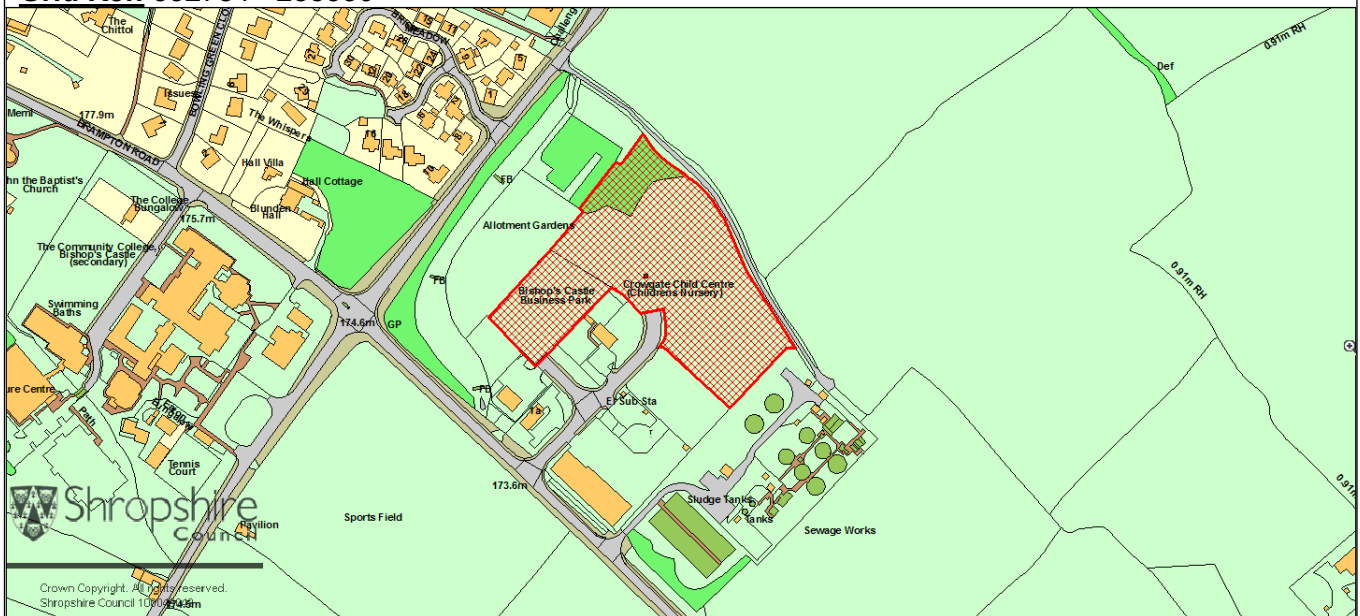
Development Management Report

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

Summary of Application

Application Number: 19/02268/FUL	Parish:	Bishops Castle
Proposal: Erection of four industrial units; formation of estate road and parking areas with planting scheme		
Site Address: Proposed Commercial Development Land To The North Of Bishops Castle Business Park Bishops Castle Shropshire		
Applicant: Shropshire Council (Economic Growth)		
Case Officer: Heather Owen	email: planning.southern@shropshire.gov.uk	

Grid Ref: 332784 - 288330



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Recommendation:- Grant Permission subject to the conditions set out in Appendix 2.

REPORT

1.0 THE PROPOSAL

- 1.1 This application seeks full planning permission for the following:
- Erection of four industrial units for B1 (light industrial, including office uses which fall outside of the A2 office use and research and development), B2 (general industrial) and B8 (storage and or distribution) usage.
 - Formation of estate road, parking areas and cycle shelter.
- 1.2 Buildings 1 and 2 are proposed to have a floor area of around 1,394sqm each and would be sited along the north west side of the site. Buildings 3 and 4 are proposed to be located along the eastern side of the site effectively in front of building 2. Both buildings have proposed floor areas of approximately 929sqm, with building 4 proposed to be subdivided into 5 starter units of approximately 185sqm each.
- 1.3 Each building is designed with a 5 degree mono-pitched roof, which would have a maximum height of approximately 10m on the building frontages, decreasing to a height of around 8.1m to the rear. The buildings are proposed to be clad on the roof and walls in profiled panels, colour to be grey.
- 1.4 The majority of the openings proposed would be within the frontages of the buildings. For the 3 larger units (buildings 1, 2 and 3) there is proposed to be a central fully glazed pedestrian entrance with glazing either side. Two industrial roller doors large enough for vehicles are proposed to be sited towards each end of the front elevation. The side elevations have no openings proposed and openings on the rear elevation are minimal, kept to the insertion of fire exit doors.
- 1.5 Building 4 has a slightly different design due to the proposal to subdivide this unit into smaller starter units. Three of the units are proposed to include industrial roller doors for vehicles, the other two units propose full glazed openings of a similar size of the roller doors.
- 1.6 Parking areas for each unit are proposed to sit immediately in front of each building. The plans indicate the site would be accessed in two locations towards the south of the site linking up with the existing business park road. Areas of landscaping in the form of two planted beds are proposed to the centre of the site. Within this area to the front of building 3 a cycle shelter of approximately 4.2m by 1.8m with a height of 2.9m is proposed that would provide 8 hoops.
- 1.7 The proposed scheme falls within the description of development under paragraph 10(a) of Schedule 2 of the Town and Country Planning (Environmental Impact Assessment Regulations), 2017 as Industrial estate development projects. With the area of development being 1.16ha which exceeds the threshold of 0.5ha in column 2 of the table in that Schedule, a Screening Opinion has been carried out and issued to the effect that an Environmental Impact Assessment is not required for this development proposal.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 The application site is an allocated parcel of land adjoining the north of Bishops Castle Business Park which is located on the eastern edge of Bishops Castle, accessed directly off the B4385, Brampton Road.
- 2.2 The site is currently a rough parcel of land, with mature hedge and tree boundaries running along the north and western sides of the site. To the north lies open farm land. A group of allotments and an area of public amenity space is set to the west. Beyond the existing business park to the south east is the sewage treatment works.
- 2.3 The site is within the catchment of the River Clun which is a designated Special Area of Conservation (SAC). Whilst outside of the Shropshire Hills AONB, the boundary of the AONB should be noted at approximately 415m to the south of the site.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 This application is presented for determination by planning committee as the application is made by Shropshire Council and the proposed development is a speculative proposal not in line with its statutory functions.

4.0 Community Representations

4.1 Consultee Comments

- 4.1.1 Bishops Castle Town Council: The Council supports the application.

- 4.1.2 SuDs: 03rd September 2019:
Option 2 – to divert overland flows and provision of flood compensation area is the preferred method of surface water drainage if building 3 cannot be relocated.

Recommend conditions requiring submission of detail foul and surface water drainage and detail of the diversion of overland flows and flood compensation area, including an exceedance flow path.

SuDs: Comments on Flood Risk Assessment: 22nd July 2019: A Flood Risk Assessment has been provided and the recommendations with the conclusions should be taken into account, in particular building 3 should be relocated outside of the surface water flood risk area to the very low risk areas to avoid any flood displacement and prevent internal flooding.

Repeat recommendation for a condition requiring surface and foul water drainage details.

SUDs Original Comments : 22nd May 2019: Additional information required.

The development site is greater than 1 hectare, a Flood Risk Assessment (FRA) should be produced.

Conditions recommended requiring details of surface and foul water drainage.

- 4.1.3 SC Trees: No objection – During site clearance and construction recommend the north-east hedgerow and mature ash tree is protected in the following ways:
- (i) No lowering of ground levels within 2.5m of the centre of the hedgerow and 5m of the retained mature ash tree.
 - (ii) The hedgerow and retained tree be protected during all site works by a tree protection fence of heras fencing fixed at no less than 2.5m from the centre of the hedgerow and at a 5m radius from the stem of the retained ash tree.
- 4.1.4 SC Highways: No objection – recommend plans are amended to include cycle storage facilities. Two cycle hoops per building are recommended that can either be collected together or set out per building. Recommend conditions requiring submission of a Construction Method Statement and the formation of parking, loading, unloading and turning areas before the first use of the site.
- 4.1.5 SC Ecology: Recommend conditions and informatives relating to bats, birds, landscaping and external lighting.

Habitat Regulations Assessment Matrix relating to the River Clun SAC completed and concluded that there are no potential effect pathways by which the proposed development might impact on the River Clun SAC.

4.2 Public Comments

- 4.2.1 This application has been advertised for 21 days via site and press notices and directly in write to 3 neighbours:
- 4.2.2 1 letter of support has been received from the Enterprise South West Shropshire Board of Directors:

This development is becoming more and more important for several reasons:

1. There are no vacant workshop units available to let in the area. We have 7 at Enterprise House and they are always full - we have a very, very low turnover.
2. Business growth requires that we have a range of different size/cost accommodation. This would allow existing business to move into larger premises and new businesses to take up the smaller/starter units.
3. With up to 60 new dwellings planned within the town there will be a demand for local employment.
4. More jobs locally will mean less commuting miles.
5. We are aware that businesses wish to move into the area and that there are businesses that, in needing to grow, may seek accommodation elsewhere.
6. The rural economy depends upon rural employment.

5.0 THE MAIN ISSUES

Principle of development
Siting, scale and design of structure
Visual impact and landscaping
Ecology
Drainage and flood risk
Highway Safety
Residential Amenity

6.0 OFFICER APPRAISAL

6.1 Principle of development

6.1.1 The National Planning Policy Framework (NPPF) seeks to ensure that planning policy should enable businesses to invest, expand and adapt. At Shropshire's Development Plan level, Policy CS13 of the Core Strategy, seeks to promote the county as a business location providing a flexible supply of employment sites in appropriate locations to meet the demand of businesses, as well as facilitating infrastructure provision. This is further supported by SAMDev policy MD4 which permits sustainable economic and employment developments on suitable sites and for Class B Uses.

6.1.2 The application site is part of a site which has been allocated within the SAMDev settlement policy S2.1 for Bishops Castle as the most sustainable location for new employment development. It is part of an existing employment commitment originally granted planning permission in 1989 (SS/1989/01127) which included the existing adjacent business park and is identified in the SAMDev settlement policy as the 'phase 2' expansion of Bishops Castle Business Park.

6.1.3 The explanatory text of the settlement policy at paragraph 4.16 states that:

'The Business Park with the existing highway access and distributor road have the potential to deliver a significant Phase 2 expansion providing over 2 hectares of Class B1, B2 and B8 development in the period to 2026. The Phase 2 expansion will require the new land to be accessed and serviced through the existing Business Park before the site can be marketed as a readily available site for employment use.'

6.1.4 Given the above policy objectives the proposed development of the site for Class B usage is considered to be acceptable in principle. A condition which restricts the uses of the buildings for Class B uses is recommended to be included on any permission granted to enable the Local Planning Authority to retain control of development on this business park in the interests of the amenity of the area.

6.2 Siting, scale and design of structure, visual impact and landscaping

6.2.1 Core Strategy policy CS6 and SAMDev policy MD2 seek to create sustainable places and requires development to be designed to a high quality using sustainable

design principles, to achieve an inclusive and accessible environment which respects and enhances local distinctiveness.

- 6.2.2 Core Strategy policy CS17 and SAMDev policy MD12 seeks to ensure that any development should protect and enhance the diversity, high quality and local character of Shropshire's natural, built and historic environment.
- 6.2.3 The design of the units is to an extent restricted by their need to be functional to enable Class B usage and in terms of the materials and scale the proposed buildings are in keeping with the existing units on the adjoining business park. The cycle shelter is a small building in comparison to the other units proposed and its design is of standard, simple form for the function proposed.
- 6.2.4 The site is currently well screened by existing mature tree and hedge lined boundaries along Love Lane and the north boundary of the application site itself. Where glimpses of the units maybe seen, particularly for example during winter months the proposed buildings would be viewed alongside existing development relating to the Bishops Castle settlement and would not appear as an isolated development within the rural area. As noted previously within this report the site is outside of the Shropshire Hills AONB, however the boundary of this national designation is approximately 415m to the south west of the application site. The impact of the development on the setting of the AONB and its character and natural beauty is considered to be minimal given the factors above. Conditions are recommended to secure tree/hedge protection along the boundary to the north east of the site during construction works.

6.3 Biodiversity

- 6.3.1 National guidance gives a duty to public bodies (including Local Planning Authorities) to ensure development does not harm protected species or its habitats. The NPPF emphasis that Local Planning Authorities should ensure development contributes to and enhance the natural and local environment, minimising impacts on biodiversity and providing net gains where possible. This is supported at local level through policies CS17 and MD12.
- 6.3.2 The application has been accompanied by an Ecology report by SLR consulted Ltd, which has been reviewed by the Councils Ecologist and whom is content that ecological interests can be safeguarded by condition and informatives.
- 6.3.3 This site is within the catchment of the River Clun Special Area of Conservation (SAC) designated due to the rivers population of Freshwater Pearl Mussels. The Rive Clun SAC is currently failing its water quality targets particularly relating to ortho-phosphates. The current phosphate target for the river and particularly at the SAC is 0.02mg/l. As such the Councils Ecology team have carried out a Habitat Regulation Assessment (HRA) attached as appendix 1 to this report. The HRA notes that the proposed development seeks to connect foul drainage to the public sewage system. Due to completion of phosphate stripping upgrades at sewage treatment works within the Clun Catchment, in order to reduce phosphate by 75%. The reduction in phosphate has been calculated to allow for the predicted level of development in the Local Plan within the catchment until 2026. As such

development connecting to the sewage treatment works can be assumed to have no likely significant effect, alone or in combination with other projects on the River Clun SAC.

6.4 Drainage and flood risk

- 6.4.1 Core Strategy policy CS18 relates to sustainable water management and seeks to ensure that surface water will be managed in a sustainable and coordinated way, with the aim to achieve a reduction in existing runoff rate and not to result in an increase in runoff.
- 6.4.2 As the development site is greater than 1 hectare a Flood Risk Assessment has been produced which confirms that the site is within Flood zone 1 and thus there is low risk of flooding from any nearby watercourses.
- 6.4.3 In terms of surface water flood risk the majority of the site is within the within very low risk zone where buildings 1, 2 and 4 would be sited. A high-risk zone is located along the south-central part of the site where soft landscaping is proposed. Part of building 3 would be sited on a low risk zone. The applicants have investigated options to relocate building 3 so it falls completely within the very low risk zone, however due to other site constraints it has been concluded that it is not possible to relocate this building. As such further assessment on flood risk of this area has been carried to include more detailed analysis of predicted flood depths, which has concluded that the potential depth of flood water at the worst case would be up to 0.15m. Two flood mitigation options have been considered, option 1 to create a flood resilient building or option 2 to divert overland flows and provide a flood compensation area. As part of this option the finished floor level of the building would be set above the anticipated depth of surface water flood and the water will be diverted around the building using drainage features such as swales and directed to flood compensation area within the application site to avoid flood water being displaced outside of the site. This 2nd option is the preferred method from the applicant's perspective and the Councils Drainage team have reviewed the options and concur that option 2 would be the preferable way to deal with the risk of surface water flooding, recommending conditions to secure the detailed design of the mitigation measures.

6.5 Highway Safety

- 6.5.1 The NPPF, at section 9, seeks to promote sustainable transport. At paragraphs 108 it states that decisions should take account of whether safe and suitable access to the site can be achieved for all people and at paragraph 109 it states that:

“Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”

- 6.5.2 Core Strategy policy CS6 seeks to secure safe development and to have appropriate parking. It also seeks to ensure that proposals likely to generate significant levels of traffic be located in accessible locations, where opportunities for walking, cycling and use of public transport can be maximised and the need for car

based travel reduced.

- 6.5.3 The scheme seeks to link up with the estate roads on the existing business park, with no alterations proposed junction where the existing business park road meets the B road. The Councils Highways Team is content with the level of parking proposed and amended plans have been received to incorporate a cycle storage area for 8 bicycles as recommended by the Councils Highways Team.
- 6.5.4 Turning to the impact of the proposal on the wider highway network. The proposed business will inevitably generate additional traffic to the local area, however it is close to a principal road network of the A488 where it meets the B4385. As such the Councils Highways Team expects that the generated traffic numbers will be diluted as they migrate to and from the site and from and to the numerous directions offered nearby. The Councils Highways Team also note that Class B uses are normally the type of businesses that populate such sites often start and finish the daily business before, during and after the peak periods of traffic flows, this will further help dilute the overall traffic impact. Overall the Councils Highway Team are content that the proposed development would not result in an unacceptable impact on highway safety, and the residual cumulative impacts on the road network would not be severe.

6.6 Residential Amenity

- 6.6.1 Core Strategy policy CS6 seeks to safeguard residential amenity. The nearest residential properties are located off Love Lane approximately 90m away, separated from the site by the road, allotments and public amenity land. At such distance the proposed buildings would not be overbearing or result in loss of light to prevent the enjoyment of these residential dwellings by the occupiers. Buildings 1 and 2 are the closest units to these neighbours and the orientation and design of these buildings is such that the main openings would face into the business park rather than the elevations facing the neighbouring site. This should help mitigate noise levels keeping it more enclosed within the business park.

7.0 CONCLUSION

- 7.1 The parcel of land subject to this application is a site allocated within the SAMDev settlement policy S2.1 for Bishops Castle as the most sustainable location for new employment development. In principle as such the use of this site for development to provide accommodation for Class B uses is acceptable.
- 7.2 The units proposed would provide for a range of Class B Uses and the design and scale are compatible with the adjacent Business park to which the site would connect.
- 7.3 Surface water drainage can be managed so as not to exacerbate the risk of flooding elsewhere. The site can be development without harm to the character of the surrounding area and wider landscape including the setting of the Shropshire Hills AONB and would not result in undue harm to biodiversity, residential amenity or highway safety.

7.4 The scheme complies with the main objectives of relevant development plan policy and it is recommended that planning permission is granted subject to conditions.

8.0 Risk Assessment and Opportunities Appraisal

8.1 Risk Management

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

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

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

8.2 Human Rights

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

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

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

8.3 Equalities

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in Planning Committee members' minds under section 70(2) of the Town and Country Planning Act 1990.

9.0 Financial Implications

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

10. Background

Relevant Planning Policies

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

Core Strategy and SAMDev Plan Policies:
CS1 - Strategic Approach
CS3 - The Market Towns and Other Key Centres
CS6 - Sustainable Design and Development Principles
CS13 - Economic Development, Enterprise and Employment
CS17 - Environmental Networks
CS18 - Sustainable Water Management

MD1 - Scale and Distribution of Development
MD2 - Sustainable Design
MD4 - Managing Employment Development
MD12 - Natural Environment

Settlement: S2 - Bishops Castle

RELEVANT PLANNING HISTORY:

11/00098/FUL Erection of workshop / office building, with vehicle circulation and parking areas and access (following demolition of existing demountable building) GRANT 7th March 2011

SS/1/1234/R/ Construction of infrastructure roads, footways and sewers for industrial development. PERCON 27th June 1991

SS/1989/1127/O/ Use of land for industrial development. PERCON 19th February 1990

11. Additional Information

View details online:

<https://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=details&keyVal=PRTE1YTDMFE00>

List of Background Papers
Cabinet Member (Portfolio Holder) Councillor Gwilym Butler
Local Member Ruth Houghton
Appendices APPENDIX 1 – River Clun SAC – Habitat Regulations Assessment APPENDIX 2 - Conditions

APPENDIX 1

Habitats Regulations Assessment (HRA) Screening Matrix

1.0 Introduction

The proposal described below has the potential to adversely affect a designated site of international importance for nature conservation. The likelihood and significance of these potential effects must be investigated.

This is a record of the Habitats Regulations Assessment (HRA) of the project at Proposed Commercial Development Land To The North Of Bishops Castle Business Park Bishops Castle Shropshire (19/02268/FUL) undertaken by Shropshire Council as the Local Planning Authority. This HRA is required by Regulation 61 of the Conservation of Habitats and Species Regulations 2017, in accordance with the EC Habitats Directive (Council Directive 92/43/EEC) before the council, as the ‘competent authority’ under the Regulations, can grant planning permission for the project. In accordance with Government policy, the assessment is also made in relation to sites listed under the 1971 Ramsar convention.

Date of completion for the HRA screening matrix:

15th July 2019

HRA screening matrix completed by:

Sophie Milburn
Assistant Biodiversity Officer
sophie.milburn@shropshire.gov.uk
Tel.: 01743 254765

2.0 HRA Stage 1 – Screening

This stage of the process aims to identify the likely impacts of a project upon an international site, either alone or in combination with other plans and projects, and to consider if the impacts

are likely to be significant. Following recent case law (*People Over Wind v Coillte Teoranta C-323/17*), any proposed mitigation measures to avoid or reduce adverse impacts are not taken into account in Stage 1. If such measures are required, then they will be considered in stage 2, Appropriate Assessment.

2.1 Summary Table 1: Details of project

Name of plan or project	19/02268/FUL Proposed Commercial Development Land To The North Of Bishops Castle Business Park Bishops Castle Shropshire
Name and description of Natura 2000 site	River Clun SAC (14.93ha) supports a significant population of Freshwater Pearl Mussel <i>Margaritifera margaritifera</i> . The River Clun SAC is currently failing its water quality targets particularly relating to ortho-phosphates. The current phosphate target for the river and particularly at the SAC is 0.02mg/l. Shropshire Council is working closely with Natural England and Environment Agency on developments within the Clun catchment. Shropshire Council formally consults Natural England on most planning applications within this area.
Description of the plan or project	Erection of four industrial units
Is the project or plan directly connected with or necessary to the management of the site (provide details)?	No
Are there any other projects or plans that together with the project or plan being assessed could affect the site (provide details)?	No Planning applications connecting to sewage treatment works in the Clun Catchment are considered to have no likely significant effect alone or in combination due to the upgraded phosphate stripping now installed.

2.2 Statement

An interim ‘Guidance note for developers on requirements for waste water management for any development in the Clun Catchment’ has been published by Shropshire Council, based on information and discussions with Natural England and the Environment Agency who have subsequently endorsed it. This guidance will be followed by the planning authority when making planning decisions until further notice, with the exceptions detailed below. The guidance note is currently under review and the council website should be checked for the most recent version:
<http://shropshire.gov.uk/environment/biodiversity-ecology-and-planning/ecological-surveys-for-planning-applications/>.

The Nutrient Management Plan for the Clun Catchment was published in October 2014 and can be viewed at <https://www.gov.uk/government/publications/nutrient-management-plan-river-clun>.

Evidence, analysis, targets and measures to reduce phosphate in the River Clun are detailed in section 4.1 of the Nutrient Management Plan.

Sewer connections

Phosphate stripping designed to reduce phosphate by 75% from sewage treatment works discharging to the Clun river catchment has now been installed within the catchment (see notification from Severn Trent Water in Appendix 1). Planning permission can now be granted for applications involving new foul water connections to the **Bishop's Castle**, Bucknell, Clun, Lydbury North, Aston on Clun, Newcastle on Clun and Clunbury sewage treatment works. The reduction in phosphate has been calculated to allow for the predicted level of development in the Local Plan within the catchment until 2026. Hence there are now no restrictions on new sewer connections.

CONNECTION TO MAINS SEWAGE TREATMENT WORKS

The proposed development will connect to Clun Sewage Treatment Works. Due to completion of phosphate stripping upgrades at sewage treatment works within the Clun Catchment, in order to reduce phosphate by 75%, properties connecting to the sewage treatment works can be assumed to have **no likely significant effect**, alone or in combination with other projects on the River Clun SAC.

In view of the above, and providing that the development is carried out according to the details submitted, the proposal will not lead to significantly increased concentrations of nutrients within the River Clun.

There is no legal barrier under the Habitats Regulations Assessment process to planning permission being granted in this case.

3.0 Guidance on completing the HRA Screening Matrix

The Habitats Regulations Assessment process

Essentially, there are two 'tests' incorporated into the procedures of Regulation 61 of the Habitats Regulations, one known as the 'significance test' and the other known as the 'integrity test'. If, taking into account scientific data, we conclude there will be no likely significant effect on the European Site from the development, the 'integrity test' need not be considered. However, if significant effects cannot be counted out, then the Integrity Test must be researched. A competent authority (such as a Local Planning Authority) may legally grant a permission only if both tests can be passed.

The first test (the significance test) is addressed by Regulation 61, part 1:

61. (1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for a plan or project which –

- (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of that site,

must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.

The second test (the integrity test) is addressed by Regulation 61, part 5:

61. (5) In light of the conclusions of the assessment, and subject to regulation 62 (consideration of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

In this context 'likely' means "probably", or "it well might happen", not merely that it is a fanciful possibility. 'Significant' means not trivial or inconsequential but an effect that is noteworthy – Natural England guidance on The Habitats Regulations Assessment of Local Development Documents (Revised Draft 2009).

Habitats Regulations Assessment Outcomes

A Local Planning Authority can only legally grant planning permission if it is established that the proposed plan or project will not adversely affect the integrity of the European Site.

If it is not possible to establish this beyond reasonable scientific doubt then planning permission cannot legally be granted.

Duty of the Local Planning Authority

It is the duty of the planning case officer, the committee considering the application and the Local Planning Authority as a whole to fully engage with the Habitats Regulations Assessment process, to have regard to the response of Natural England and to determine, beyond reasonable scientific doubt, the outcome of the 'significance' test and the 'integrity' test before making a planning decision.

APPENDIX 2

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 REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

3. Within 90 days prior to the commencement of development, a badger inspection shall be undertaken by an appropriately qualified and experienced ecologist and the outcome reported in writing to the Local Planning Authority. If new evidence of badgers is recorded during the pre-commencement survey then the ecologist shall submit a mitigation strategy for prior approval that sets out appropriate actions to be taken during the works. These measures will be implemented as approved.

Reason: To ensure the protection of badgers under the Protection of Badgers Act 1992.

4. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- o the parking of vehicles of site operatives and visitors
 - o loading and unloading of plant and materials
 - o storage of plant and materials used in constructing the development
 - o wheel washing facilities
 - o measures to control the emission of dust and dirt during construction
 - o a scheme for recycling/disposing of waste resulting from demolition and construction works
 - o a traffic management and HGV routing plan

Reason: To avoid congestion in the surrounding area and to protect the amenities of the area.

5. Before any development commences a tree protection fence of heras fencing shall be erection fixed at no less than 2.5m from the centre of the hedgerow and at a 5m radius from the stem of the retained ash tree along the north east boundary. The tree protection fencing shall remain in place for the duration of the construction of the development and at no time shall there be a lowering of ground levels within 2.5m of the centre of the hedgerow and 5m of the retained mature ash tree.

Reason: To protect the existing landscaping during the construction phase of the development in the interest of visual amenity.

6. No development shall take place until a scheme of the surface water drainage has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the diversion of overland flows and flood compensation area, including an exceedance flow path for building 3. The approved scheme shall be fully implemented before the development is occupied/brought into use (whichever 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 REQUIRE APPROVAL DURING THE CONSTRUCTION/PRIOR TO THE OCCUPATION OF THE DEVELOPMENT

7. Prior to the first use of the development a landscaping plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include:
- a) Planting plans, creation of wildlife habitats and features and ecological enhancements (e.g. hibernacula and amphibian-friendly gully pots);
 - b) Written specifications (including cultivation and other operations associated with plant, grass and wildlife habitat establishment);
 - c) Schedules of plants, noting species (including scientific names), planting sizes and proposed numbers/densities where appropriate;
 - d) Native species used are to be of local provenance (Shropshire or surrounding counties);

e) Implementation timetables.

The landscaping plan shall be carried out as approved and in full accordance with the approved implementation timetable.

Any trees or plants that, within a period of five years after planting, are removed, die or become, seriously damaged or defective, shall be replaced with others of species, size and number as originally approved, by the end of the first available planting season.

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

8. Prior to first occupation / use of the buildings, the following boxes shall be erected on the site:

- A minimum of 2 external woodcrete bat boxes or integrated bat bricks, suitable for nursery or summer roosting for small crevice dwelling bat species.
- A minimum of 4 artificial nests, of either integrated brick design or external box design, suitable for swifts (swift bricks or boxes).

and the precise makes, models and locations of bat and bird boxes shall be first submitted to and approved in writing by the Local Planning Authority.

The boxes shall be sited in suitable locations, with a clear flight path and where they will be unaffected by artificial lighting.

The boxes shall thereafter be maintained for the lifetime of the development.

Reason: To ensure the provision of roosting and nesting opportunities, in accordance with MD12, CS17 and section 175 of the NPPF.

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

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

10. Prior to the erection of any external lighting on the site, a lighting plan shall be submitted to and approved in writing by the Local Planning Authority. The lighting plan shall demonstrate that the proposed lighting will not impact upon ecological networks and/or sensitive features, e.g. bat and bird boxes (required under a separate planning condition). The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust's Guidance Note 08/18 Bats and artificial lighting in the UK. The development shall be carried out strictly in accordance with the approved details and thereafter retained for the lifetime of the development.

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

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

11. The units hereby approved shall be used for B1, B2 or B8 Use Classes only; and for no other purposes in Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.

Reason: In order to restrict the use of the premises to protect the employment uses and in the interest of the amenities of the area.

Informatives

1. Nesting birds informative

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

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

All vegetation clearance, tree removal and/or scrub removal should be carried out outside of the bird nesting season which runs from March to August inclusive.

If it is necessary for work to commence in the nesting season then a pre-commencement inspection of the vegetation for active bird nests should be carried out. If vegetation cannot be clearly seen to be clear of nests then an appropriately qualified and experienced ecologist should be called in to carry out the check. No clearance works can take place with 5m of an active nest.

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

General site informative for wildlife protection

Widespread reptiles (adder, slow worm, common lizard and grass snake) are protected under the Wildlife and Countryside Act 1981 (as amended) from killing, injury and trade. Widespread amphibians (common toad, common frog, smooth newt and palmate newt) are protected from trade. The European hedgehog is a Species of Principal Importance under section 41 of the Natural Environment and Rural Communities Act 2006. Reasonable precautions should be taken during works to ensure that these species are not harmed.

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

If piles of rubble, logs, bricks, other loose materials or other potential refuges are to be disturbed, this should be done by hand and carried out during the active season (March to October) when the weather is warm.

Areas of long and overgrown vegetation should be removed in stages. Vegetation should first be strimmed to a height of approximately 15cm and then left for 24 hours to allow any animals to move away from the area. Arisings should then be removed from the site or placed in habitat piles in suitable locations around the site. The vegetation can then be strimmed down to a height of 5cm and then cut down further or removed as required. Vegetation removal should be done in one direction, towards remaining vegetated areas (hedgerows etc.) to avoid trapping wildlife.

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

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

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

Any common reptiles or amphibians discovered should be allowed to naturally disperse. Advice should be sought from an appropriately qualified and experienced ecologist if large numbers of common reptiles or amphibians are present.

If a great crested newt is discovered at any stage then all work must immediately halt and an appropriately qualified and experienced ecologist and Natural England (0300 060 3900) should be contacted for advice. The Local Planning Authority should also be informed.

If a hibernating hedgehog is found on the site, it should be covered over with a cardboard box and advice sought from an appropriately qualified and experienced ecologist or the British Hedgehog Preservation Society (01584 890 801).

2. In arriving at this decision Shropshire Council has used its best endeavours to work with the applicant in a positive and proactive manner to secure an appropriate outcome as required in the National Planning Policy Framework, paragraph 38.

-



Committee and date
 South Planning Committee
 24 September 2019

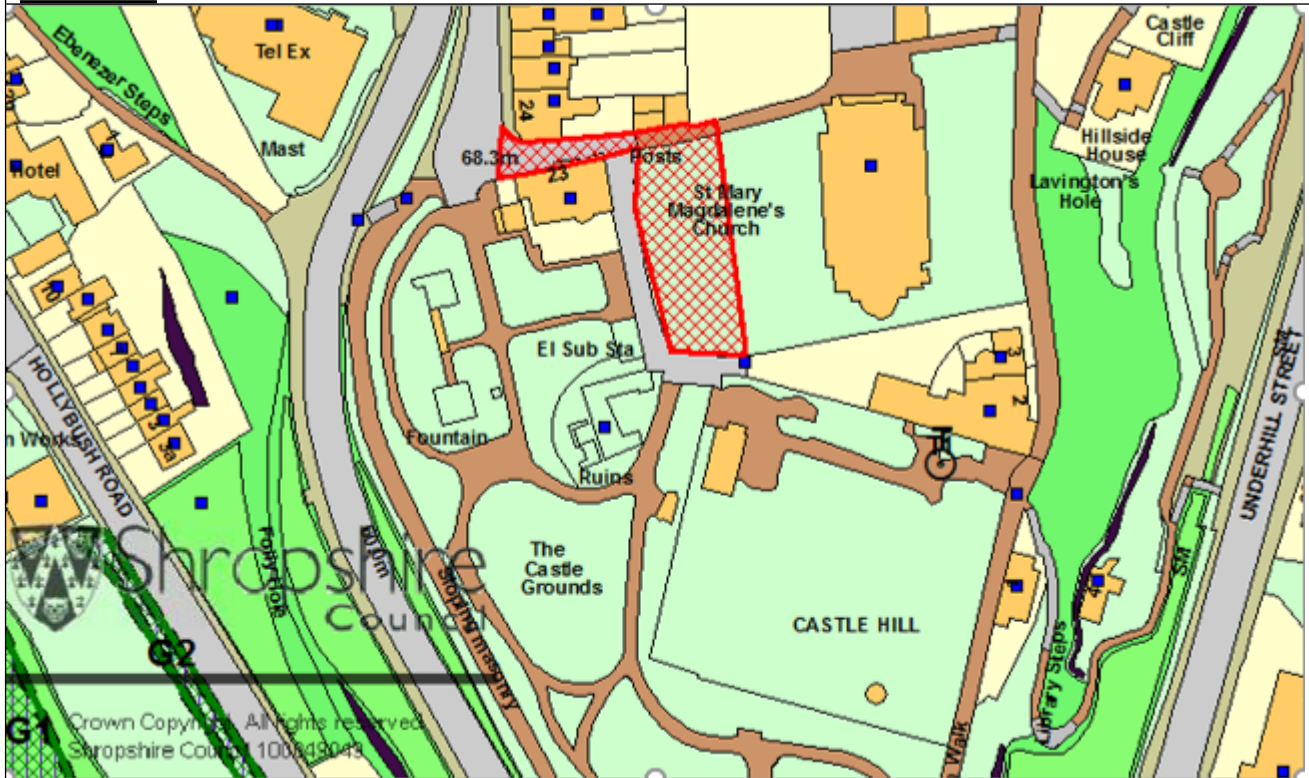
Development Management Report

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

Summary of Application

Application Number: 19/02793/FUL	Parish:	Bridgnorth
Proposal: Formation of six space car park and associated vehicular and pedestrian access for use in connection with St Mary's Church		
Site Address: St Mary Magdalenes Church East Castle Street Bridgnorth Shropshire		
Applicant: Reverend Simon Cawdell		
Case Officer: Emma Bailey	email: planning.southern@shropshire.gov.uk	

Grid Ref: 371696 - 292829



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Recommendation:- Permit, subject to the conditions set out in Appendix 1.

REPORT

1.0 THE PROPOSAL

1.1 This application seeks full planning consent for the formation of six parking spaces and associated works at St Marys Church, Bridgnorth.

1.2 The parking spaces would be positioned along the western boundary of the churchyard, enclosed by post and rail fencing and secured by a chain across the frontage. Two of the six spaces would be made larger for improved accessibility. The materials used for the surface of the parking area would act primarily to protect the ground beneath, being a 3 dimensional no-dig cellular confinement system with a permeable surface, filled with 5mm lime free grit and hard wearing grass mix.

2.0 SITE LOCATION/DESCRIPTION

2.1 The site lies in a particularly sensitive area of historic interest, being within close proximity to St Marys Church (Grade II*) and Bridgnorth Castle, and within the Bridgnorth conservation area. The parking area would be positioned to the north-western corner of an area of churchyard, on land that is currently used informally for the parking of vehicles.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

3.1 The Town Council view is contrary to the Officer recommendation. The Principal Planning Officer, in consultation with the Chair and Vice Chair of the South Planning Committee, consider that the site history in this case and the level of local interest raises complex issues in the planning balance and it should be determined by the South Planning Committee.

4.0 COMMUNITY REPRESENTATIONS

Please note that all comments are available to view in full on the Shropshire Council website.

4.1 Consultee Comments

4.1.1 Bridgnorth Town Council

Members wish to object to this application at this point in time because they have the following potential concerns:

- The access and stability of the access road
- The proposal only provides two disabled parking spaces and, given the reasoning in the application, we would expect all spaces to be for disabled parking.
- Appropriateness in a Conservation Area

- 4.1.2 Shropshire Council (Trees)
Recommend condition relating to tree works and tree protection measures if minded to approve.
- 4.1.3 Shropshire Council (Highways)
Recommend informatives relating to works affecting the public highway, mud on the highways and drainage discharge to the highway if minded to approve.
- 4.1.4 Shropshire Council (Conservation)
Recommend condition relating to details of boundary treatments if minded to approve.
- 4.1.5 Shropshire Council (Drainage)
No objection.
- 4.1.6 Shropshire Council (Archaeology)
Recommend condition relating to a written scheme of investigation if minded to approve.
- 4.1.7 Shropshire Council (Ecology)
Recommend condition relating to bat and bird box and informatives relating to nesting birds, wildlife protection, landscaping and lighting if minded to approve.
- 4.1.8 Historic England
Historic England Advice – Comment:
Thomas Telford's church of St Mary Magdalene built 1792-94, is Grade II* listed and described in Pevsner as a remarkable design of great gravity both inside and out. It occupies a prominent location in the Bridgnorth Conservation Area on the high ground west of the River Severn and, together with the ruins of the adjacent castle, is a landmark feature of the Bridgnorth skyline. St Mary Magdalene has high historical value as an example of the work of Telford, a nationally renowned architect notable for his connections with Shropshire as designer of the world's first iron bridge. There is much historical value in the church's location within the medieval defensive area of Bridgnorth and potential for below ground archaeology given its proximity to the scheduled remains of the castle. The church has very high designed aesthetic value in its own right as a piece of outstanding architecture with its bold Tuscan portico and grandly scaled side elevations with strikingly large windows set between giant Tuscan pilasters and as a key element in a piece of late eighteenth century planned townscape. In addition to this designed setting, the attractive quality of the access from West Castle Street and the natural drama of the descent to the River Severn and the long country views east lend the church it considerable fortuitous aesthetic value. In addition to these qualities St Mary Magdalene has high intrinsic communal value as a symbol of enduring Christian faith and the identity of Bridgnorth.

The proposal concerns the use of part of the western grave yard for car parking and represents a change in setting of the listed building and

potentially that of the scheduled castle remains that could impact on their significance. It should therefore be assessed in terms of policy set out in section 16 of the NPPF including paragraphs: 193, 194 and 196 relating to the great weight that should be given to the conservation of scheduled monuments and Grade II* listed buildings and the need for a clear and convincing justification for any harm caused by development within their setting.

It is Historic England's opinion that the grave yard contributes to the historical and aesthetic value of the church being the space within which the giant order pilasters, large nave windows and massive gravity of the design are experienced. It is also part of the context in which the scheduled castle remains are experienced though its contribution to their aesthetic value is considerably lessened by the existence of mature planting between the graveyard and the castle access.

At present the area is used for unorganised, informal car parking that strikes a discordant note and harms the aesthetic value of the church. While the proposal seeks to bring order to this situation with a sensitive choice of ground netting, timber post and rail demarcation and managed access, the change from what should be a tranquil green space to formal car parking will result in harm. It also involves the relocation of graves and excavation that could affect archaeology relating to the castle as well as impacting on historical and communal value of the church. The proposal therefore requires a clear and convincing justification.

Historic England accepts that the visual impact of the car park has been minimised, that proposed retention of the trees conserves the aesthetic value of the scheduled monument and that a watching brief will capture archaeological value. We are not, however, expert in assessing parking need and therefore urge you to seek the advice of your own specialists on this element of justification. If this advice concludes that a good case exists, we would not, on balance, object to development which, though harmful, has the heritage benefit of helping to keep a historic place of worship in use.

Recommendation

Historic England has concerns regarding the application on heritage grounds.

4.2 Public Comments

- 4.2.1 A press notice was placed in the Shropshire Star newspaper 23.07.2019, and site notice was positioned nearby to the application site 19.07.2019 and neighbour letters were sent. A total of 54 letters of representation have been received. 22 letters support the development, and 32 letters object.
- 4.2.2 Within the letters of objection received, the following key points are raised:
- ☐ Alternative areas for parking should be considered
 - ☐ Hazardous for those using the public footpath

- ☐ Parking enforcement
- ☐ Impact of the development on the historic environment
- ☐ The churchyard is consecrated ground, the development is disrespectful
- ☐ Will negatively impact tourism/visitor numbers to the area
- ☐ Highways concerns (access, congestion, car park design)
- ☐ People currently park there and walk into town, abandon vehicles, wash cars, vehicles park here day and night
- ☐ Need
- ☐ Disturbance and increased pollution to neighbouring occupiers
- ☐ Only two of the six spaces are allocated for the disabled
- ☐ Ground and water contamination
- ☐ Churchgoers should use the Park and Ride
- ☐ Would set a precedent
- ☐ The railings which ran along the side of the footpath should be reinstated to prevent car parking altogether
- ☐ Disputes with the vicar
- ☐ People visit the churchyard to visit their ancestor's graves
- ☐ The address of the site is incorrect
- ☐ Listed building consent is required
- ☐ Impact on trees
- ☐ The applicant does not and will not maintain the site
- ☐ The site should be used for the Church and graveyard only
- ☐ The Church already uses the site as a car park
- ☐ Impact on graves
- ☐ Other Churches in the town manage without their own car parks
- ☐ Land ownership
- ☐ People are deterred from objecting because of the fear of offending others
- ☐ Ecology
- ☐ The works could affect the integrity of Bridgnorth castle
- ☐ The Church should provide transport
- ☐ Church attendance is declining
- ☐ Damage to property
- ☐ Planning history

4.2.3 Within the letters of support received, the following key points are raised:

- ☐ Would enable elderly people/people of limited mobility to continue to attend Church
- ☐ Would not harm the amenity of neighbours
- ☐ No religious or respect issue with the siting of the car park, there are alternative ways of paying your respects to the dead
- ☐ St Marys Church is very popular
- ☐ Parking in East Castle St is extremely limited
- ☐ Churchgoers already provide transport to and from services who are elderly/of limited mobility, however it is not possible to do this for all of those who may wish to attend
- ☐ The area of the proposed car park is small given the size of the church and the churchyard and makes best use of the space

available

- ☐ Informal parking already takes place here which has damaged the grass, a defined parking area will be an improvement
- ☐ The development will be in keeping with the Conservation Area
- ☐ The nearest car park is a considerable distance away
- ☐ There is no on-street parking available that gives enough time for worshippers to attend services without getting a parking ticket
- ☐ Wildlife surveys have been carried out
- ☐ The car park is only small but the benefits for those affected are huge
- ☐ It is important for people of faith to be able to meet together in their place of worship
- ☐ The people who would benefit are not asking a lot, as a community we should be enabling them to live their best lives
- ☐ Bridgnorth has an ageing population
- ☐ The carpark would only be open when the Church is in use
- ☐ St Marys Church is a community hub for Bridgnorth, offers various events in addition to church services
- ☐ The Church is open seven days a week
- ☐ No-one likes to see change
- ☐ When there is a funeral or wedding the forecourt of the Church is not available for parking, alternative parking is essential
- ☐ The objections are from people who do not attend and are not members of the Church
- ☐ A regularly used car park may deter antisocial behaviour
- ☐ Limited/no bus services on Sundays
- ☐ Bridgnorth forms part of a Team Ministry Benefice, sometimes congregation members travel in from across the rural areas of the benefice, collection is not convenient for these people
- ☐ Would meet the obligations of the Equality Act
- ☐ Access should only be when the Church is being used for services
- ☐ Life expectancy is now much longer, there is an increased need for provision for elderly people and those with restricted mobility who wish to attend services
- ☐ All gravestones have long ago fallen or disintegrated, the proposed works would not disturb buried remains
- ☐ Unofficial parking has taken place on site since the Council removed bollards to allow access to properties, the Church has no way of preventing parking on the Churchyard
- ☐ The proposals will regularise parking on site
- ☐ The proposed surface will protect the land from erosion
- ☐ The proposal will involve the erection of a barrier to prevent access onto the site outside of Church hours
- ☐ Spaces will be marked out which will prevent overspill
- ☐ By formally designating this area as parking for Churchgoers it is anticipated that this will reduce conflict in the community that has occurred previously
- ☐ Without sufficient numbers the Church will eventually close
- ☐ The Church is a lifeline for some and maintains their role in the community, the Church should be welcoming to all

5.0 THE MAIN ISSUES

- ☐ Principle of development
- ☐ Historic environment considerations
- ☐ Highways considerations
- ☐ Letters of representation
- ☐ Other matters

6.0 OFFICER APPRAISAL

6.1 Principle of development

6.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that all planning applications must be determined in accordance with the adopted development plan 'unless material considerations indicate otherwise'. The local development framework of the county of Shropshire principally consists at this time of the Core Strategy (2011) and Site Allocations and Management of Development (SAMDev) Plan (2015), and a range of supplementary planning documents.

6.1.2 Paragraph 11 of the National Planning Policy Framework builds on this wording by encouraging planning to look favourably upon development, unless the harm that would arise from any approval would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.

6.1.3 The National Planning Policy Framework (NPPF) has been published by national government and represents guidance for local planning authorities. It is a material consideration to be given weight in the determination of planning applications.

6.1.4 Development that affects the historic environment

6.1.5 The application site lies in a highly sensitive location of historic interest, including St Marys Church (Grade II*) and the Bridgnorth conservation area. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that when deciding whether to grant consent for development which affects a listed building or its setting, Local Planning Authorities should have special regard to the desirability of preserving the building or its setting or any features of special architectural and historic interest which it possesses.

6.1.6 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that when deciding whether to grant consent for development which affects a conservation area, Local Planning Authorities should have special regard to the desirability of preserving the character or appearance of that area.

6.1.7 Part 16 'Conserving and Enhancing the Historic Environment' of the NPPF encourages local planning authorities to take account of:

- ☐ the desirability of sustaining and enhancing the significance of heritage assets, and putting them to viable uses consistent with their conservation;
- ☐ the wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring;
- ☐ the desirability of new development making a positive contribution to local character and distinctiveness; and
- ☐ opportunities to draw on the contribution made by the historic environment to the character of a place.

6.1.8 This advice is repeated within Policy CS6 ‘Sustainable Design and Development Principles’ of Shropshire Council’s Core Strategy, and Policy MD2 ‘Sustainable Design’ of the SAMDev Plan, which amongst other matters requires great weight to be given to the conservation of designated heritage assets. This is in addition to the guidance provided within Policies CS5 ‘Countryside and Green Belt’ and CS17 ‘Environmental Networks’ of the Core Strategy, and Policy MD12 ‘Natural Environment’ of the SAMDev Plan, which seeks to protect, maintain and where appropriate enhance the local environment.

6.1.9 Paragraph 127 of the NPPF also reinforces that developments should be ‘sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change’, which is broadly repeated within SAMDev Policy MD13 ‘Historic Environment’ which stipulates that Shropshire’s heritage assets should be protected, conserved, sympathetically enhanced and restored where appropriate.

6.1.10 In considering the potential impacts of development on designated and non-designated heritage assets, paragraphs 193 to 197 of the NPPF requires any identified harm to be weighed against the public benefits of the proposal.

6.1.11 Development that affects community facilities

6.1.12 The NPPF under Paragraph 8 considers amongst other matters there is a need to ‘support strong, vibrant and healthy communities... by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being’.

6.1.13 The need for the provision and accessibility of community facilities is a matter repeated throughout this document (NPPF). Specifically, Paragraph 92 seeks to safeguard such facilities as well as allow them to ‘develop and modernise’ and be ‘retained for the benefit of the local community’:

6.1.14 *“92. To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:*

a) plan positively for the provision and use of shared spaces,

community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;

b) take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community;

c) guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs;

d) ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community; and

e) ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.”

6.1.15 Shropshire Council's Policies CS6 'Sustainable Design and Development Principles' and CS8 'Facilities, Services and Infrastructure Provision' builds upon this wording by giving support to developments that allow for safe and healthy communities where residents can enjoy a high quality of life, and be accessible to all. Specific encouragement is given to 'Protecting and enhancing existing facilities, services and amenities that contribute to the quality of life of residents and visitors'.

6.1.16 The principle of this development may therefore be acceptable, however its acceptability principally rests upon the level of any harm to the sensitive receptors identified above, and any other material planning consideration.

6.2 Historic environment considerations

6.2.1 St Mary's Church is acknowledged as forming a part of Bridgnorth that has exceptionally high historic value. In their consultee response, Historic England describes the site as follows:

6.2.2 Thomas Telford's church of St Mary Magdalene built 1792-94, is Grade II* listed and described in Pevsner as a remarkable design of great gravity both inside and out. It occupies a prominent location in the Bridgnorth Conservation Area on the high ground west of the River Severn and, together with the ruins of the adjacent castle, is a landmark feature of the Bridgnorth skyline. St Mary Magdalene has high historical value as an example of the work of Telford, a nationally renowned architect notable for his connections with Shropshire as designer of the world's first iron bridge. There is much historical value in the church's location within the medieval defensive area of Bridgnorth and potential for below ground archaeology given its proximity to the scheduled remains of the castle. The church has very high designed aesthetic value in its own right as a piece of outstanding architecture with its bold Tuscan portico and grandly scaled

side elevations with strikingly large windows set between giant Tuscan pilasters and as a key element in a piece of late eighteenth century planned townscape. In addition to this designed setting, the attractive quality of the access from West Castle Street and the natural drama of the descent to the River Severn and the long country views east lend the church it considerable fortuitous aesthetic value. In addition to these qualities St Mary Magdalene has high intrinsic communal value as a symbol of enduring Christian faith and the identity of Bridgnorth.

- 6.2.3 It is pertinent to note that this is not the first application that has been submitted to the Local Planning Authority seeking car parking on part of this site. Permission has previously been sought for the construction of hardstanding for cars with access from West Castle Street under planning ref: BR/89/0480, for vehicles used by Bridgnorth Team Ministry staff. This was refused for the following reason:
- 6.2.4 1. The proposed parking area will have an adverse effect on the setting of the Listed Building and would be detrimental to the amenities of the Conservation Area by reason of its appearance the precedent it would set.
- 6.2.5 An appeal was then lodged and subsequently dismissed under case ref: T/APP/J3205/A/90/147404/P8 on the 12 June 1990. Amongst other matters, the appeals inspector stated at the time that:
- 6.2.6 *“The protection of St Marys Church and its setting, which are part of the national heritage, ought to take precedence over the provision of convenient parking spaces. The movement of offensive car parking from one position on the site to another does not provide the adequate planning gain, sufficient to warrant setting aside the listed building and conservation area policies, as suggested in the representations. On the matter of parking in churchyards elsewhere, the evidence before is insufficient to enable a balanced judgement, related to this case, to be made. However, the photographs provided do show the harmful appearance that cars, parked near important churches, create on the buildings and on their surroundings.”*
- 6.2.7 A key issue in this case therefore is whether there is ‘adequate planning gain’ to outweigh the harm that was previously identified to the historic environment.
- 6.2.8 The submitted supporting statement sets out that development is needed in order to improve the church’s accessibility, particularly for those of limited mobility. From the letters of support received it can be understood that difficulty in attending St Marys church can be attributed to:
- ☐ Restricted parking availability in the immediate vicinity that is time-limited and shared with permit holders
 - ☐ Public car parks being some distance away
 - ☐ Restricted public transport services, particularly on Sundays

- 6.2.9 In commenting on the proposed development, Historic England concludes that the development would result in ‘harm’, but that the extent of this harm should be weighed in the balance of the potential benefit of users of the Church, concluding:
- 6.2.10 *“Historic England accepts that the visual impact of the car park has been minimised, that proposed retention of the trees conserves the aesthetic value of the scheduled monument and that a watching brief will capture archaeological value. We are not, however, expert in assessing parking need and therefore urge you to seek the advice of you own specialists on this element of justification. If this advice concludes that a good case exists, we would not, on balance, object to development which, though harmful, has the heritage benefit of helping to keep a historic place of worship in use.”*
- 6.2.11 Highways matters are discussed separately within this Report.
- 6.2.12 Shropshire Council’s Conservation and Archaeology teams have in addition been consulted as part of this application for their specialist advice. Shropshire Council’s Conservation team have made the following comments:
- 6.2.13 *“This application relates to the formation of a 6 space car park within the grounds of St Marys Church, East Castle Street, Bridgnorth. The church itself is Grade II* listed and the area proposed for use as car parking is within the immediate setting of the listed building but also falls within the Bridgnorth conservation area and within close proximity of a number of other listed buildings. The site is therefore a very sensitive one and a sensitive approach is required here. There has been an informal parking arrangement in this area for a number of years and this has caused some degradation of the grass surface which in turn has visual impact upon the setting of the church. A more formalised solution as proposed has the potential to minimise this current degradation and maintain a well-kept appearance to the parking area as it can be more controlled. The solution proposed is fairly low key but gives the opportunity to control when the parking spaces are in use by provided a chained off access and also a surface treatment that should be able to better withstand the wear and tear associated with the use. The formalisation of the proposed parking use is considered to be appropriate and the justification for the spaces that has been provided is considered sufficient in this instance. Therefore the proposal is considered to generally accord with policies, guidance and legislation as outlined above from a conservation perspective”.*
- 6.2.14 These comments are accepted and discussed more fully within the conclusion of this Report.

6.3 Highways considerations

- 6.3.1 Shropshire Council does not have any parking guidelines at present and as such Officers must consider each application on a case-by-case basis. Critically, the National Planning Policy Framework makes it clear that ‘Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe’ (Paragraph 109).
- 6.3.2 Shropshire Council’s Highways team have been consulted as part of this application for their specialist advice. In their response, the following comments have been made:
- 6.3.3 *“The current vehicle access serves properties within the surrounding area meaning pedestrians are already aware of current vehicular movement. The church is to appoint a car park marshal who will supervise the cars upon arrival and leaving. This also satisfies us of the safety of pedestrians and vehicles using the existing footpath/carriageway. With the proposed measures and details in place we are satisfied from a highway safety perspective.”*
- 6.3.4 These comments are accepted and discussed more fully within the conclusion of this Report.
- 6.4 **Letters of representation**
- 6.4.1 The key points raised in the public consultation are discussed in turn below:
- 6.4.2 Alternative areas for parking should be considered
This comment is noted, however it would be at the discretion of the applicant to put forward alternative sites. Every planning application submitted to the Council is considered on its own merits.
- 6.4.3 Hazardous for those using the public footpath
This comment is discussed within this Report.
- 6.4.4 Parking enforcement
This comment is discussed within this Report.
- 6.4.5 Impact of the development on the historic environment
This comment is discussed within this Report.
- 6.4.6 The churchyard is consecrated ground, the development is disrespectful
This comment is noted. It should be made clear that the granting of any planning consent does not override any other permissions that would be required from separate bodies prior to works commencing.
- 6.4.7 Will negatively impact tourism/visitor numbers to the area
This comment is discussed within this Report.

- 6.4.8 Highways concerns (access, congestion, car park design)
This comment is discussed within this Report.
- 6.4.9 People currently park there and walk into town, abandon vehicles, wash cars, vehicles park here day and night
This comment is noted.
- 6.4.10 Need
This comment is discussed within this Report.
- 6.4.11 Disturbance and increased pollution to neighbouring occupiers
This comment is noted. Shropshire Council's Regulatory Services team have been consulted as part of this application, who have no comments to make.
- 6.4.12 Only two of the six spaces are allocated for the disabled
This comment is discussed within this Report.
- 6.4.13 Ground and water contamination
Shropshire Council's Regulatory Services and Drainage teams have been consulted as part of this application, who have no comments to make.
- 6.4.14 Churchgoers should use the Park and Ride
This comment is noted. The current park and ride in Bridgnorth operates on Saturdays and is seasonal.
- 6.4.15 Would set a precedent
This is speculation only. Every planning application submitted to the Council is considered on its own merits.
- 6.4.16 The railings which ran along the side of the footpath should be reinstated to prevent car parking altogether
This comment is noted, however the reinstatement of railings would be at the discretion of the applicant and would require planning permission. This current application is being judged on its own merits. It should be made clear that the granting of any planning consent does not override any other permissions that would be required from separate bodies prior to works commencing.
- 6.4.17 Disputes with the applicant
Disputes between the applicant and the local community cannot be considered as material to the consideration of this planning application in this case.
- 6.4.18 People visit the churchyard to visit their ancestor's graves
This comment is noted. It should be made clear that the granting of any planning consent does not override any other permissions that would be required from separate bodies prior to works commencing.
- 6.4.19 The address of the site is incorrect
This comment is noted, however the location of the site and the intentions

of the applicant are clearly shown on the submitted plans. A site notice has additionally been placed at the application site for the avoidance of any doubt.

6.4.20 Listed building consent is required

Historic England sets out that listed building consent is required in the following instances:

Listed building consent is required for all works of demolition, alteration or extension to a listed building that affect its character as a building of special architectural or historic interest.

The requirement applies to all types of works and to all parts of those buildings covered by the listing protection (possibly including attached and curtilage buildings or other structures), provided the works affect the character of the building as a building of special interest.

This application relates to the formation of a parking area. It does not propose to alter any listed building, nor does it relate to a curtilage building or structure. Listed building consent is therefore not required.

More information on listed building consent is available to view on the Historic England website using the following web link:
<https://historicengland.org.uk/advice/hpg/consent/lbc/>.

6.4.21 Impact on trees

Shropshire Council's Trees team have been consulted as part of this application, who have recommended a condition if planning approval is given.

6.4.22 The applicant does not and will not maintain the site

This is speculation only and cannot be considered as material to the consideration of this planning application in this case. Any breach of planning condition on the grant of any consent may result in enforcement being taken. Matters that relate to the maintenance of St Marys Church more generally may fall outside of the remit of Shropshire Council's planning department.

6.4.23 The site should be used for the Church and graveyard only

This comment is noted. It should be made clear that the granting of any planning consent does not override any other permissions that would be required from separate bodies prior to works commencing.

6.4.24 The Church already uses the site as a car park

This comment is discussed within this Report.

6.4.25 Impact on graves

This comment is discussed within this Report. It should be made clear that the granting of any planning consent does not override any other permissions that would be required from separate bodies that are

governed by their own legislation.

6.4.26 Other Churches in the town manage without their own car parks

This comment is noted.

6.4.27 Land ownership

Matters relating to land ownership cannot be considered as material to the consideration of this planning application in this case. It should be made clear that the granting of any planning consent does not override any other permissions that would be required from separate bodies prior to works commencing.

6.4.28 People are deterred from objecting because of the fear of offending others

This comment is noted, however the Council has performed their statutory duty in respect of public consultations. It would be the choice of any person whether they wish to make a representation.

6.4.29 Ecology

Shropshire Council's Ecology team have been consulted as part of this application, who have recommended a condition and informatives if planning approval is given.

6.4.30 The works could affect the integrity of Bridgnorth castle

This comment is noted. However, this application proposes a 'light touch' approach which is unlikely to undermine the integrity of nearby buildings or structures. No concerns in relation to this matter have been raised by statutory consultees, and the site is not identified as being part of an area that is potentially unstable through historic mining activity or similar.

6.4.31 The Church should provide transport

This comment is noted, however this matter is not something that the Council could impose and it would be at the discretion of the Church to provide transport. This application is being determined on its own merits.

6.4.32 Church attendance is declining

This comment is noted.

6.4.33 Damage to property

Matters relating to alleged potential damage to property cannot be considered as material to the consideration of this planning application in this case.

6.4.34 Planning history

This comment is discussed within this Report.

7.0 CONCLUSION

7.1 When taking the above matters into consideration, a significant amount of change has occurred to the planning system since the submission and determination of planning ref: BR/89/0480, including a significant overhaul of planning policy. National planning policy in particular has shifted to give

local authorities a greater degree of pragmatism in the context of deciding applications and recognising when there are occasions where the special circumstances of the case make a development that would otherwise be unacceptable, acceptable.

- 7.2 Officers accept that the development would cause harm to the historic environment, in particular the setting of the church. The concerns raised by the Appeals Inspector in 1990 are acknowledged and it is agreed by both the Council's Conservation Team and Historic England within their consultee response that the presence of cars in the grounds of the churchyard continues to be undesirable. Notwithstanding this, this application has resulted following a need to provide better access to the church for the less mobile, and this need is clear through the number of representations received in support of this development. There is in addition an ongoing unrestricted parking issue on this site, which arguably has the potential to cause a significantly greater level of harm. This unrestricted parking of vehicles has resulted in the degradation of the ground and friction within the local community, which has also been well documented in the letters of representation received.
- 7.3 It is pertinent to note that the ability to park a car on land does not require planning permission in its own right when for purposes associated with the Church. It is the proposed works to form the parking area in this application that require consent. Amongst other things, the submission of a planning application gives the Local Planning Authority an opportunity to set parameters in which a development is acceptable through the use of appropriate planning conditions, and gives a clear starting point to enforce against any potential breach in the future.
- 7.4 From a planning perspective, the proposal would create a formal parking area that would limit the amount of vehicles parked on site, to the benefit of pedestrian safety and would strengthen and protect the ground to avoid further degradation. Further, by introducing a parking marshal and securing the parking area when it is not in use this dissuades drivers from using the car park for reasons unconnected with the church and from using the site for antisocial behaviour more generally, which has also been raised as an issue in the letters of representation received.
- 7.5 Matters relating to whether vehicles can rightfully park on a churchyard and the moral issues that surround this matter including the moving of headstones falls outside of the remit of what can be considered as part of this planning application. It should also be made clear that the granting of any planning consent does not override any other permissions that would be required from separate bodies prior to works commencing.
- 7.6 It is considered that there is an overriding public benefit in providing the parking sought, which would facilitate the continued viable use of the listed building consistent with its conservation (Paragraph 192 a) of the NPPF. Approval is therefore recommended, subject to conditions.

8.0 Risk Assessment and Opportunities Appraisal

8.1 Risk Management

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

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

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

8.2 Human Rights

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

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

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

8.3 Equalities

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in Planning Committee members' minds under section 70(2) of the Town and Country Planning Act 1990.

9.0 Financial Implications

There are likely financial implications if the decision and / or imposition of

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

10. Background

Relevant Planning Policies

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

Shropshire Core Strategy and SAMDev Plan Policies:
CS6 Sustainable Design and Development Principles
CS17 Environmental Networks
CS18 Sustainable Water Management
MD2 Sustainable Design
MD12 Natural Environment
MD13 Historic Environment

RELEVANT PLANNING HISTORY:

HEPRE/12/00195 Blue Plaque in vestibule LBCNRQ 5th July 2012
BR/TRE/TCA/97/0068 Removal of dead wood and crown lifting of: oak (3) horse chestnut, lime, lawson's cypress (7), yew trees. NOOBJC 23rd December 1997
BR/TRE/TCA/97/0075 Fell 1 no. Ash tree. NOOBJC 15th January 1998
18/00602/TCA To reduce in height by 25% a group of 3 No Lawson Cypress Trees within Bridgnorth Conservation Area CBR 28th February 2018
18/05757/TCA Fell 2no Lawson Cypress within Bridgnorth Conservation Area (Amended 04.01.2019) NOOBJC 22nd January 2019
19/02793/FUL Formation of six space car park and associated vehicular and pedestrian access for use in connection with St Mary's Church PCO
BR/APP/FUL/06/0936 Extension to brick paving and erection of bollards GRANT 5th January 2007
BR/87/0419 Rebuilding of boundary retaining wall GRANT 10th August 1987
BR/87/0418 Rebuilding of boundary retaining wall GRANT 10th August 1987
BR/89/0480 Construction of hardstanding for cars with access from West Castle Street REF 22nd August 1989
BR/91/0965 Display of two fabric banners on the north facing wall of the Church. GRANT 3rd March 1992
BR/94/0038 Construction of a disabled access ramp at the front of the Church. GRANT 11th April 1994
BR/99/0795 Installation of foul drain and control kiosk. GRANT 21st December 1999

Appeal

09/01517/REF CONSTRUCTION OF HARDSTANDING FOR CARS WITH ACCESS FROM WEST CASTLE STREET DISMIS 12th June 1990

11. Additional Information

View details online: <https://pa.shropshire.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

<p>List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information) Planning, Heritage and Design and Access Statement Ecological Report Tree Condition Report</p>

<p>Cabinet Member (Portfolio Holder) Councillor Gwilym Butler</p>
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<p>Local Member</p>

<p>Cllr Les Winwood Cllr Elliot Lynch</p>
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<p>Appendices APPENDIX 1 - Conditions</p>
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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. No above ground works shall commence until details of the proposed materials to be used in the formation of the carpark including details of boundary treatments have been first submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details prior to the car park being first brought into use.

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

4. All pre-commencement tree works and tree protection measures detailed in the approved Arboricultural Method Statement (Forester and Arborist Services Ltd, 19-02-2019) and Tree Location and Protection Plan (dwg: 906-02-PK03 02, 29-03-2019) shall be fully implemented before any development-related equipment, materials or machinery are brought onto the site.

The development shall be implemented in accordance with the approved Arboricultural Method Statement (AMS) and Tree Location and Protection Plan. The ground amelioration works and installation of the no-dig surface specified within the AMS shall be carried out under the watching supervision of an arboricultural specialist. The approved tree protection measures shall be maintained in a satisfactory condition throughout the duration of the development, until all equipment, machinery and surplus materials have been removed from the site.

Reason: to safeguard the amenities of the local area and to protect the natural features that contribute towards this and that are important to the appearance of the development.

5. No development approved by this permission shall commence until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI). This written scheme shall be approved in writing by the Planning Authority prior to the commencement of works.

Reason: The site is known to hold archaeological interest.

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

6. Prior to first use of the car park, the makes, models and locations of bat and bird boxes shall be submitted to and approved in writing by the Local Planning Authority. The following boxes shall be erected on the site:

- A minimum of 1 external woodcrete bat boxes or integrated bat bricks, suitable for nursery or summer roosting for small crevice dwelling bat species.
- A minimum of 2 artificial nests, of either integrated brick design or external box design, suitable for starlings (42mm hole, starling specific), sparrows (32mm hole, terrace design), swifts (swift bricks or boxes) and/or house martins (house martin nesting cups).

The boxes shall be sited in suitable locations, with a clear flight path and where they will be unaffected by artificial lighting. The boxes shall thereafter be maintained for the lifetime of the development.

Reason: To ensure the provision of roosting and nesting opportunities, in accordance with MD12, CS17 and section 175 of the NPPF.

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

7. The use and operation of the car park hereby approved shall be restricted to when services and other events take place at St Mary's Church only, in accordance with paragraphs 2.3 and 2.4 of the Planning, Heritage and Design and Access Statement prepared by Alan Murphy, dated June 2019 and received by the Local Planning Authority on 20th June 2019.

Reason: To ensure that the development is exclusively for the benefit of the designated heritage asset in its function.

Informatives**1. ECOLOGY INFORMATIVES****Nesting birds informative**

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

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

All vegetation clearance, tree removal and/or scrub removal should be carried out outside of the bird nesting season which runs from March to August inclusive.

If it is necessary for work to commence in the nesting season then a pre-commencement inspection of the vegetation for active bird nests should be carried out. If vegetation cannot be clearly seen to be clear of nests then an appropriately qualified and experienced ecologist

should be called in to carry out the check. No clearance works can take place with 5m of an active nest.

General site informative for wildlife protection

Widespread reptiles (adder, slow worm, common lizard and grass snake) are protected under the Wildlife and Countryside Act 1981 (as amended) from killing, injury and trade. Widespread amphibians (common toad, common frog, smooth newt and palmate newt) are protected from trade. The European hedgehog is a Species of Principal Importance under section 41 of the Natural Environment and Rural Communities Act 2006. Reasonable precautions should be taken during works to ensure that these species are not harmed.

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

If piles of rubble, logs, bricks, other loose materials or other potential refuges are to be disturbed, this should be done by hand and carried out during the active season (March to October) when the weather is warm.

Areas of long and overgrown vegetation should be removed in stages. Vegetation should first be strimmed to a height of approximately 15cm and then left for 24 hours to allow any animals to move away from the area. Arisings should then be removed from the site or placed in habitat piles in suitable locations around the site. The vegetation can then be strimmed down to a height of 5cm and then cut down further or removed as required. Vegetation removal should be done in one direction, towards remaining vegetated areas (hedgerows etc.) to avoid trapping wildlife.

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

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

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

Any common reptiles or amphibians discovered should be allowed to naturally disperse. Advice should be sought from an appropriately qualified and experienced ecologist if large numbers of common reptiles or amphibians are present.

If a great crested newt is discovered at any stage then all work must immediately halt and an appropriately qualified and experienced ecologist and Natural England (0300 060 3900) should be contacted for advice. The Local Planning Authority should also be informed.

If a hibernating hedgehog is found on the site, it should be covered over with a cardboard box and advice sought from an appropriately qualified and experienced ecologist or the British Hedgehog Preservation Society (01584 890 801).

Landscaping informative

Where it is intended to create semi-natural habitats (e.g. hedgerow/tree/shrub/wildflower planting), all species used in the planting proposal should be locally native species of local provenance (Shropshire or surrounding counties). This will conserve and enhance biodiversity by protecting the local floristic gene pool and preventing the spread of non-native species.

Lighting informative

Should any additional lighting be required, this should be sensitive to bats and follow the Bat Conservation Trust's guidance. The latest Bat Conservation Trust guidance on bats and lighting is currently available at <https://www.theilp.org.uk/documents/guidance-note-8-bats-and-artificial-lighting/>.

2. HIGHWAYS INFORMATIVES

Works on, within or abutting the public highway

This planning permission does not authorise the applicant to:

- construct any means of access over the publicly maintained highway (footway or verge) or
- carry out any works within the publicly maintained highway, or
- authorise the laying of private apparatus within the confines of the public highway including any a new utility connection, or
- undertake the disturbance of ground or structures supporting or abutting the publicly maintained highway

The applicant should in the first instance contact Shropshire Councils Street works team. This link provides further details

<https://www.shropshire.gov.uk/street-works/street-works-application-forms/>.

Please note: Shropshire Council require at least 3 months' notice of the applicant's intention to commence any such works affecting the public highway so that the applicant can be provided with an appropriate licence, permit and/or approved specification for the works together and a list of approved contractors, as required.

Mud on highway

The applicant is responsible for keeping the highway free from any mud or other material emanating from the application site or any works pertaining thereto.

No drainage to discharge to highway

Drainage arrangements shall be provided to ensure that surface water from the driveway and/or vehicular turning area does not discharge onto the public highway. No drainage or effluent from the proposed development shall be allowed to discharge into any highway drain or over any part of the public highway.

3. PARAGRAPH 38

In arriving at this decision, the Council has used its best endeavours to work with the applicant in a positive and proactive manner to secure an appropriate outcome as required by the National Planning Policy Framework, paragraph 38.

4. PLANNING POLICIES

In determining the application the Local Planning Authority gave consideration to the following policies:

National Planning Policy Framework
 National Planning Practice Guidance

Shropshire Council Core Strategy policies:
 CS06 - Sustainable Design and Development Principles
 CS08 - Facilities, Services and Infrastructure Provision
 CS17 - Environmental Networks
 CS18 - Sustainable Water Management

Shropshire Council Site Allocations and Management of Development (SAMDev) Plan policies:
 MD02 - Sustainable Design
 MD12 - Natural Environment
 MD13 - Historic Environment
 S03 - Bridgnorth

-



Committee and date

South Planning Committee

24 September 2019

Development Management Report

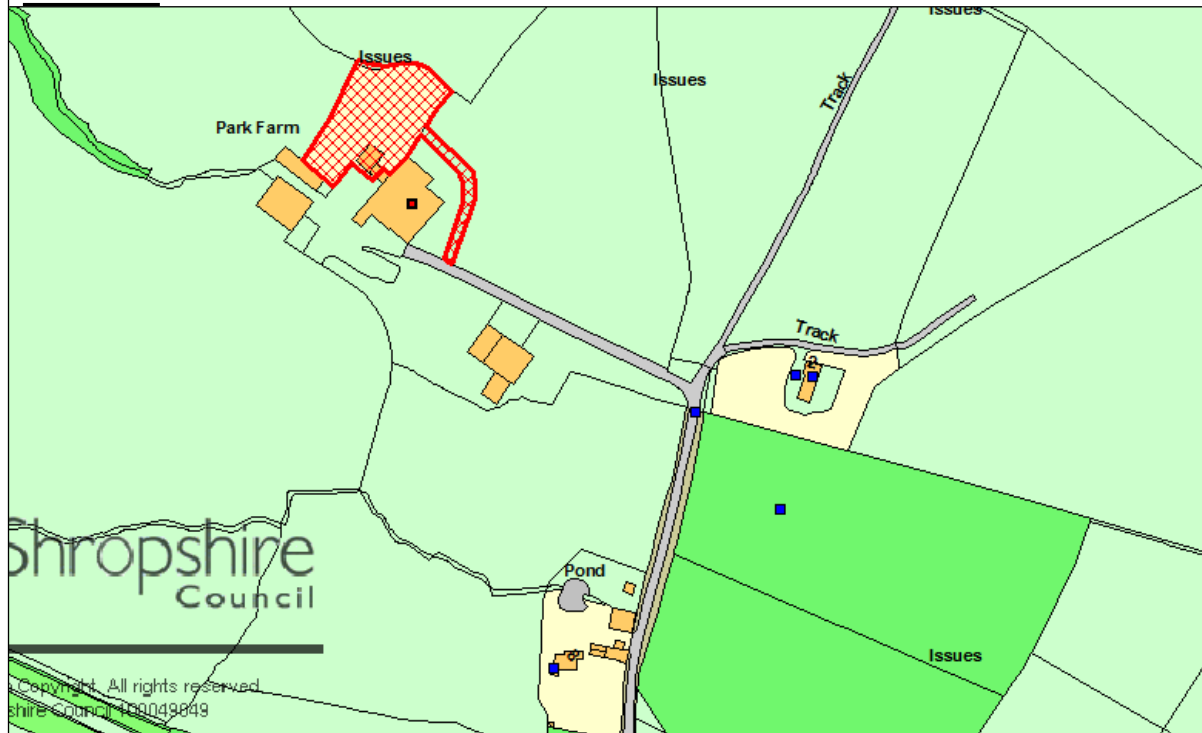
Responsible Officer: Tim Rogers

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

Summary of Application

Application Number: 19/03195/FUL	Parish: Bitterley
Proposal: Erection of two storey and single storey extensions and improvements to existing farmhouse	
Site Address: Park Farm Angel Lane Farden Ludlow Shropshire	
Applicant: Mr Owen Huffer	
Case Officer: Elizabeth Davies	email: planningdmsw@shropshire.gov.uk

Grid Ref: 358134 - 276761



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

REPORT

1.0 THE PROPOSAL

1.1 The application seeks full planning permission for the following:

- Demolish the existing single storey porch and utility room on the northwest elevation and replace it with a stone-faced single storey porch and snug with pitched roof over the snug and a monopitched roof over the porch.. Fenestrations would be added to all elevations in the form of windows to the southwest and northwest elevations and a door to the northeast elevation.
- Reconfigure the ground floor layout and relocate the main access to the northeast elevation. This will allow for a new entrance hall area to be created that would be single storey in nature with matching brick walls and a tiled pitched roof. A door flanked with windows each side would sit centrally on the northeast elevation, while a window would be added to the southeast elevation to help reduce the bulk visually. This new entrance hall would link through into a new utility room (which was formally an adjoining outbuilding) which also would be of brick construction with a tiled pitched roof over with a door leading out from the southwest elevation..
- Erect a new 2 storey extension from matching brickwork beneath a tiled pitched roof would be added to the rear elevation that would create a new sitting room to the ground floor and a master bedroom above. Large glazed bi-folding doors would grace the northwest elevation with 2 pitched roof dormers above to serve the first floor, while the fenestrations proposed to the southeast elevation would consist of a triple casement window to the ground floor and a pitched roof dormer above.
- All the existing windows would be replaced with windows considered to be more in keeping with the existing property, and in addition, the south west elevation would see the existing 3 windows at first floor level replaced with 3 pitched roof dormer windows.

2.0 SITE LOCATION/DESCRIPTION

2.1 Park Farm is located within the Shropshire Hills Area Of Outstanding Natural Beauty and is set within a large domestic curtilage. Sitting at the end of Angel Lane, which is located off Angel Bank, the main A4117 road between Ludlow and Clee Hill. The property is a part stone and part brick building under a natural clay tiled roof and sits adjacent to the original farmyard. With it being the original farmhouse, agricultural buildings naturally surround it.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 The application form indicates that a Shropshire Council Councillor owns part of the application land and therefore under the Council's 'Scheme of Delegation' the application is required to be determined by committee.

4.0 Community Representations

- 4.1 Consultee Comments - full details of the responses can be viewed online.

- 4.1.1 Bitterley Parish Council – Support

- 4.1.2 Shropshire Council Historic Environment – No objection

It appears from the above information and from the photographic evidence and historic mapping that the building would be of 19th century date and would therefore be of some historic interest. The property also lies within the AONB. The property is obviously not habitable and therefore it is acknowledged that some works will be necessary to bring the building back into use. The proposed extensions and alterations are considered to be acceptable in this instance but may be the limit to the extension of this property which appears to have been altered and extended in the past. The introduction of dormer windows to the front elevation appears to be justified from a safety perspective and therefore we have no conservation objections to this element. Due to the location of the property the impact upon the AONB is considered to be minimal. Generally to proposal is considered to accord with policies, guidance and legislation as outlined above from a conservation perspective. Materials should match existing.

- 4.1.3 Shropshire Council Archaeology - No objections are raised to the proposal subject to the recommended condition being included on any planning permission that may be granted.

- 4.1.4 Shropshire Council Ecology – No objections are raised to the proposal subject to the recommended conditions and informatives being included on any planning permission that may be granted.

- 4.1.5 Shropshire Council Drainage - No objections are raised to the proposal subject to the recommended informative being included on any planning permission that may be granted.

- 4.1.6 Shropshire Hills AONB – Comments

The local planning authority has a statutory duty to take into account the AONB designation, and National Planning Policy Framework (NPPF) policies give the highest level of protection to AONBs. The application also needs to conform to the Council's own Core Strategy policies and the Site Allocations and Management of

Development (SAMDev) plan, whilst the Shropshire Hills AONB Management Plan is a further material consideration. The lack of detailed comments by the Partnership should not be interpreted as suggesting that the application raises no landscape issues.

4.2 Public Comments

4.2.1 Notices at the site have advertised the application and no representations have been received in response to this publicity.

5.0 THE MAIN ISSUES

Principle of development
Siting, scale and design of structure
Visual impact and landscaping
Residential amenity
Archaeology
Ecology

6.0 OFFICER APPRAISAL

6.1 Principle of development

6.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that all planning applications must be determined in accordance with the adopted development plan 'unless material considerations indicate otherwise'. Paragraph 11 of the National Planning Policy Framework builds on this wording by encouraging planning to look favourably upon development, unless the harm that would arise from any approval would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.

6.1.2 Policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy and MD2 of the adopted Shropshire Sites Allocations and Management of Development (SAMDev) 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 12 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.

6.1.3 The application site is within an Area of Outstanding Natural Beauty, therefore Shropshire Core Strategy Policy CS5: Countryside and Greenbelt and CS17: Environmental Networks along with MD12: Natural Environment of the adopted Shropshire Sites Allocation and Management of Development (SAMDev) must also be considered; the protection and enhancing of the natural environment is sought

under the policy.

- 6.1.4 The property is not listed or within a conservation area but could be considered to be a non-designated heritage asset by virtue of its age and architectural details, therefore the proposal also needs to meet policy CS17 'Environmental Networks' and MD13: Historic Environment of SAMDev, which requires that all development protects and enhances the diversity, high quality and local character of Shropshire's natural, built and historic environment and does not adversely affect the visual, ecological, geological or heritage values of these assets, their immediate surroundings. Paragraph 197 of the NPPF states that the Local Planning Authority has a duty to consider the effect of an application on the significance of a non-designated heritage asset and should ensure that a balanced judgement will be required regarding the scale of any harm.
- 6.1.5 On the basis of the above, it is considered by Officers that there is no objection to the principle of the construction of extensions to the property. Other issues relating to scale, design, impact on neighbours etc. will be discussed further in this report.

6.2 Siting, scale and design of structure

- 6.2.1 With respect to the policies set out in paragraph 6.1.4 above, the development is proposed to reflect the local vernacular, so as to be in style and scale of the existing building. The proposed extensions are sited on the same footprint (more or less) and to the sides of the building and the overall height of any roofs will not exceed that of the original house. The proposal is considered to be in scale and proportions commensurate with the existing structure. In addition, the majority of the original feature would remain thus preserving the non-designated heritage asset, with the existing structure remaining dominant.
- 6.2.2 External finishes are to match the existing, being natural stone to the walls of the rebuilt snug/porch, facing brickwork to the extensions and clay tiles to the roof, both of which will match the existing. The demolished bricks are to be cleaned and re used to make good where windows have been raised.
- 6.2.3 Overall the proposed extension is considered to be sympathetic to the size, mass, character and appearance of the original dwelling house and would be in accordance with the above policies.

6.3 Visual impact and landscaping

- 6.3.1 The application site sits on the western slopes of Clee Hill and within the Shropshire Hills AONB. The main aspect of property also faces this direction where there are long distance views across the valley from Bitterley. The replacement snug and porch are in the same positions as the existing; this also applies to the utility room that will replace the current adjoining outbuilding and therefore the visual impact from this direction is considered minimal. The main 2-storey extension would be located on the northeast elevation along with the new entrance hall and thus hidden from this most prominent viewing direction. In addition, the existing and adjoining farm buildings would allow these proposed alterations and additions to blend in with the existing property/buildings without

visually adding additional bulk to the property.

6.4 Residential amenity

- 6.4.1 Core Strategy policy CS6 seeks to safeguard residential and local amenity. Given the site's distance from the neighbouring properties, it is considered that the proposal would not lead to any adverse impacts in terms of neighbouring amenity.

6.5 Archaeology

- 6.5.1 The proposed development site is a stone and brick-built farmhouse (Shropshire Historic Environment Record [HER] No PRN 23010) of early 19th century and possibly earlier date, first identified and classified by the Historic Farmsteads Characterisation Project, 2008 2010. The proposed development site therefore be deemed to have some historical and archaeological interest and has been considered by Shropshire Council's Archaeology Officer. No objection has been raised and it is considered that the archaeological potential of the site can be satisfactorily managed by a condition requiring that a programme of archaeological work be submitted to the Local Planning Authority for approval prior to the commencement of the works. In view of the above it is considered that the proposed development will not have a detrimental impact and that the proposal meets the requirements of paragraph 199 of the NPPF policy and MD13 of SAMDev.

6.6 Ecology

- 6.6.1 The NPPF and policy CS17 of the Shropshire Core Strategy require consideration to be given to the impact of the proposed development on the natural environment. This particularly relates to the impact on statutorily protected species and habitats. Policy MD12 of SAMDev further supports the principle of protecting and enhancing the natural environment. Therefore the application has been considered by the Council's Ecologist and no objection has been received. However it has been recommended by the Council's Ecologist that conditions and informatives be included on any planning permission that may be granted. These will improve and protect the existing biodiversity of the area.

7.0 CONCLUSION

The proposal is judged to be in scale and character with the original non-designated heritage asset and would have no significant adverse impact on the visual or residential amenities of the surrounding AONB area. The application therefore accords with the principal determining criteria of the relevant development plan policies and approval is recommended, subject to conditions to reinforce the critical aspects.

8.0 Risk Assessment and Opportunities Appraisal

8.1 Risk Management

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

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

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

8.2 Human Rights

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

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

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

8.3 Equalities

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in Planning Committee members' minds under section 70(2) of the Town and Country Planning Act 1990.

9.0 Financial Implications

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

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

10. Background

Relevant Planning Policies

Central Government Guidance:
National Planning Policy Framework

Core Strategy and SAMDev Plan Policies:
CS05 – Countryside and Greenbelt
CS06 - Sustainable Design and Development Principles
CS17 - Environmental Networks
MD02 - Sustainable Design
MD12 - Natural Environment

RELEVANT PLANNING HISTORY:

SS/1987/377/R/ Erection of an agricultural workers dwelling. PERCON 19th July 1988
SS/1987/377/O/ Erection of an agricultural workers dwelling. PERCON 27th November 1987

11. Additional Information

View details online: <https://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=details&keyVal=PUQB3GTD08V00>

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) Councillor Gwilym Butler
Local Member Cllr Richard Huffer
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 external materials shall match those of the existing building.
Reason: To ensure that the works harmonise with the existing development.

CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

4. No development approved by this permission shall commence until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI). This written scheme shall be approved in writing by the Planning Authority prior to the commencement of works.

Reason: The site is known to hold archaeological interest. This information is required prior to the commencement of the development as it relates to matters which need to be confirmed before the development proceeds in order to ensure a sustainable development.
5. No development approved by this permission shall commence until a photographic survey (Level 2 photographic recording), as defined in English Heritage's guidance 'Understanding Historic Buildings: A Guide to Good Recording Practice' of the existing structure has been submitted to and approved in writing by the Local Planning Authority.

Reason: This information is required before development commences to record the historic fabric of the building prior to development.

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

6. Prior to first occupation / use of the extensions hereby approved, the makes, models and locations of bat and bird boxes shall be submitted to and approved in writing by the Local Planning Authority and installed in accordance with the approved details. The following boxes shall be erected on the site:

- A minimum of 2 external woodcrete bat boxes or integrated bat bricks, suitable for nursery or summer roosting for small crevice dwelling bat species.
- A minimum of 2 artificial nests, of either integrated brick design or external box design, suitable for swifts (swift bricks or boxes).

The boxes shall be sited in suitable locations, with a clear flight path and where they will be unaffected by artificial lighting. The boxes shall thereafter be maintained for the lifetime of the development.

Reason: To ensure the provision of roosting and nesting opportunities, in accordance with MD12, CS17 and section 175 of the NPPF.

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

7. Prior to the erection of any external lighting on the site associated with the development hereby approved, a lighting plan shall be submitted to and approved in writing by the Local Planning Authority. The lighting plan shall demonstrate that the proposed lighting will not impact upon ecological networks and/or sensitive features, e.g. bat and bird boxes (required under a separate planning condition). The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust's Guidance Note 08/18 Bats and artificial lighting in the UK. The development shall be carried out strictly in accordance with the approved details and thereafter retained for the lifetime of the development.

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

Informatives

1. In arriving at this decision Shropshire Council has used its best endeavours to work with the applicant in a positive and proactive manner to secure an appropriate outcome as required in the National Planning Policy Framework, paragraph 38.

2. A sustainable drainage scheme for the disposal of surface water from the development should be designed and constructed in accordance with the Council's Surface Water Management: Interim Guidance for Developers document. It is available on the council's website at: <https://www.shropshire.gov.uk/media/5929/surface-water-management-interim-guidance-for-developers.pdf>

The provisions of the Planning Practice Guidance, Flood Risk and Coastal Change, should be followed.

Preference should be given to drainage measures which allow rainwater to soakaway naturally. Soakaways should be designed in accordance with BRE Digest 365. Connection of new surface water drainage systems to existing drains / sewers should only be undertaken as a last resort, if it can be demonstrated that infiltration techniques are not achievable.

3. All bat species found in the U.K. are protected under the Habitats Directive 1992, The Conservation of Habitats and Species Regulations 2017 and the Wildlife and Countryside Act 1981 (as amended).

It is a criminal offence to kill, injure, capture or disturb a bat; and to damage, destroy or obstruct access to a bat roost. There is an unlimited fine and/or up to six months imprisonment for such offences.

If any evidence of bats is discovered at any stage then development works must immediately halt and an appropriately qualified and experienced ecologist and Natural England (0300 060 3900) contacted for advice on how to proceed. The Local Planning Authority should also be informed.

Any chemical treatment of timbers should not take place between the beginning of October and the end of March and no pointing or repairs of any gaps or crevices which cannot be easily seen to be empty should take place between the beginning of October and the first week in April, to minimise the possibility of incarcerating bats.

If timber treatment is being used then the Natural England's Technical Information Note 092: Bats and timber treatment products (2nd edition) should be consulted and a suitable 'bat safe' product should be used (see <http://webarchive.nationalarchives.gov.uk/20160913000001/http://publications.naturalengland.org.uk/publication/31005>).

Breathable roofing membranes should not be used as it produces extremes of humidity and bats can become entangled in the fibres. Traditional hessian reinforced bitumen felt should be chosen.

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

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

All vegetation clearance, tree removal, scrub removal and/or conversion, renovation and demolition work in buildings should be carried out outside of the bird nesting season which runs from March to August inclusive.

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

5. Widespread reptiles (adder, slow worm, common lizard and grass snake) are protected under the Wildlife and Countryside Act 1981 (as amended) from killing, injury and trade. Widespread amphibians (common toad, common frog, smooth newt and palmate newt) are protected from trade. The European hedgehog is a Species of Principal Importance under section 41 of the Natural Environment and Rural Communities Act 2006. Reasonable precautions should be taken during works to ensure that these species are not harmed.

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

If piles of rubble, logs, bricks, other loose materials or other potential refuges are to be disturbed, this should be done by hand and carried out during the active season (March to October) when the weather is warm.

Areas of long and overgrown vegetation should be removed in stages. Vegetation should first be strimmed to a height of approximately 15cm and then left for 24 hours to allow any animals to move away from the area. Arisings should then be removed from the site or placed in habitat piles in suitable locations around the site. The vegetation can then be strimmed down to a height of 5cm and then cut down further or removed as required. Vegetation removal should be done in one direction, towards remaining vegetated areas (hedgerows etc.) to avoid trapping wildlife.

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

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

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

Any common reptiles or amphibians discovered should be allowed to naturally disperse. Advice should be sought from an appropriately qualified and experienced ecologist if large numbers of common reptiles or amphibians are present.

If a great crested newt is discovered at any stage then all work must immediately halt and an appropriately qualified and experienced ecologist and Natural England (0300 060 3900) should be contacted for advice. The Local Planning Authority should also be informed.

If a hibernating hedgehog is found on the site, it should be covered over with a cardboard box and advice sought from an appropriately qualified and experienced ecologist or the British Hedgehog Preservation Society (01584 890 801).

6. Where it is intended to create semi-natural habitats (e.g. hedgerow/tree/shrub/wildflower planting), all species used in the planting proposal should be locally native species of local provenance (Shropshire or surrounding counties). This will conserve and enhance biodiversity by protecting the local floristic gene pool and preventing the spread of non-native species.

-



Committee and date

South Planning Committee

24 September 2019

Development Management Report

SCHEDULE OF APPEALS AS AT COMMITTEE 24/09/2019

LPA reference	18/05705/FUL
Appeal against	Refusal
Committee or Del. Decision	Committee
Appellant	Mr & Mrs Drummond
Proposal	Erection of single storey rear extension with roof terrace above
Location	47 Folley Road Ackleton Shropshire WV6 7JL
Date of appeal	20.08.2019
Appeal method	Fast Track
Date site visit	
Date of appeal decision	
Costs awarded	
Appeal decision	

LPA reference	13/00519/FUL
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr Peter Yeoward
Proposal	Seasonal change of use from agriculture to site 21 pens and runs in fields C & D on the submitted plan for rearing pheasant chicks from the 1st May and to growing-on the pheasant poults for egg laying and breeding stock until 31st December in fields A and B on the submitted plan.
Location	Newcastle Court Newcastle Shropshire SY7 8QL
Date of appeal	06.03.2019
Appeal method	Hearing
Date site visit	
Date of appeal decision	29.08.2019
Costs awarded	No
Appeal decision	Dismissed

LPA reference	18/05095/FUL
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr Dave Edwards
Proposal	Erection of replacement dwelling and detached garage; formation of vehicular access
Location	Hill Cottage Top Road Pontesbury Shrewsbury SY5 0YE
Date of appeal	
Appeal method	Written Representations
Date site visit	08.05.2019
Date of appeal decision	05.09.2019
Costs awarded	
Appeal decision	Dismissed

LPA reference	18/05321/OUT
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr R Whittle
Proposal	Outline application for the erection of 7 No dwellings; formation of new access road and vehicular access, to include layout (with all other matters reserved)
Location	Land Rear Of Beech Croft Vicarage Lane Highley Shropshire
Date of appeal	09/09/2019
Appeal method	Written Representation
Date site visit	
Date of appeal decision	
Costs awarded	
Appeal decision	

LPA reference	17/04603/OUT
Appeal against	Refusal
Committee or Del. Decision	Committee
Appellant	Donald Patter
Proposal	Outline application (all matters reserved) for the erection of one detached dwelling
Location	Proposed Dwelling Adj. The Lindens Duke Street Broseley Shropshire TF12 5LS
Date of appeal	12.6.19
Appeal method	Written representations
Date site visit	29.7.19
Date of appeal decision	13.9.2019
Costs awarded	
Appeal decision	Allowed

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Appeal Decision

Hearing Held on 14 August 2019

Site visit made on 14 August 2019

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2019

Appeal Ref: APP/L3245/W/3216559

Newcastle Court, Craven Arms, Shropshire SY7 8QL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Peter Yeoward of J.C. Yeoward and Co against the decision of Shropshire Council.
 - The application Ref 13/00519/FUL, dated 20 January 2013, was refused by notice dated 23 May 2018.
 - The development proposed is a temporary change of use from agriculture to grow on pheasant poults for egg laying and breeding stock from 1st September until 31st December.
-

Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Mr Peter Yeoward of J.C. Yeoward and Co against Shropshire Council. This application is the subject of a separate Decision.

Procedural matters

3. The description of development set out above has been taken from the planning application form. However, the main parties agreed at the Hearing that the dates referred to do not reflect the extent of the use and the basis on which the Council considered and determined the planning application. It was agreed that the use takes place between 1 May and the end of February each year. Hence, I agree with the view of both parties that the description of development should be *"A seasonal change of use from agriculture to site 21 pens and runs in fields C and D on the submitted plan for rearing pheasant chicks from the 1 May and to growing-on the pheasant poults for egg laying and breeding stock until end of February in fields A and B on the submitted plan"*. I consider that this description better reflects the scheme that is before me and thus my findings relate to this description of development.
4. The proposal relates to a seasonal use of agricultural land for laying stock pheasants. The main parties agree that planning permission is required because the pheasants reared on the site are for sporting purposes, which takes the use outside of the definition of 'agriculture'¹. I have no reason to doubt the main parties view on this matter given the evidence before me.

¹ Section 336, Town and Country Planning Act 1990 (as amended)

5. It is common ground between the main parties that the use for which planning permission has been sought and which is subject of this appeal commenced in 2010. Since that time, the use has expanded and continued until the present day. In due course, I will outline the use and its operation, but the use relates to four fields. For clarity and ease I have adopted the same references as those used by the main parties. All four fields are next to, and slope down to the Folly Brook. At the time of my site visit, the coops and runs used in conjunction with the use were not erect on the land. Instead, they were stored at the edge of several fields. There were no birds on the site at the time of my visit, but Fields C and D had recently been ploughed following the removal of the pheasant chicks. I have considered the appeal on this basis.
6. Following a change in procedure, the main parties were given an opportunity to update their evidence ahead of the Hearing. I have had regard to these submissions and the further technical evidence submitted by the appellant.

Main issue

7. The main issue is the effect of the proposal on the River Clun Special Area of Conservation (SAC) and the Shropshire Hills Area of Outstanding Natural Beauty (AONB).

Reasons

The Site, the SAC and AONB

8. The appeal site relates to a landholding of around 16.5 hectares within the steep sided valley of Folly Brook which cuts into the hills to the north of the River Clun. Two of the four fields are on the west side of Folly Brook (Fields A and B), whilst two fields are on the east side (Fields C and D). The site is situated below a wooded hillside and to the north of the village of Newcastle on Clun. A traditional pattern of hedged fields characterises the area, whilst the agricultural land quality is grade 4 and 5 and most suited to grazing sheep. The site is within the AONB. The valley is unspoilt with little built development other than a handful of scattered cottages along the road. Newcastle Court and related buildings are close to the village. Access to the fields is from Newcastle Court to the south and the C6194 which runs along the west side of the valley. There are three cottages situated along the lane with views across the valley. The rolling rural landscape is of particularly high quality.
9. The site lies within the River Clun catchment area. Folly Brook is a tributary of the River Clun² which is in turn a tributary of the River Teme, which is the second largest tributary of the River Severn, draining a hilly, predominantly rural catchment of Silurian and Devonian rocks. The River Teme is a Site of Special Scientific Interest (SSSI). Folly Brook is a designated Priority River Habitat and is one of the most naturally functioning river systems in England. The site is around 12 miles upstream of the SAC, a designated European site. The SAC is afforded protection under the EU Habitats Directive (92/43/EEC) and the Conservation of Habitats and Species Regulations 2010. The SAC includes only the lower reaches of the River Clun and extends upstream from its confluence with the River Teme to Broadward Bridge near Marlow. This section of the river holds an important population of the freshwater pearl mussel (FWPM), one of the few populations left in the lowlands of the UK. Although the FWPM is not a priority species, it is listed as a qualifying species for the SAC.

² River Clun catchment, Plan Ref: 1954/PE/01 Version 1

10. While the appeal site is upstream of the SAC, Folly Brook, which itself is served by numerous tributaries³, provides a direct hydrological link to it. The Folly Brook catchment represents a small proportion of the River Clun catchment that feeds into the SAC, but it already has unacceptably high sediment load. The SAC is currently failing its Favourable Condition Targets (FCT) for in-river Soluble Reactive Phosphorus (SRP), Total Oxidised Nitrogen (TON) and sediment (suspended solids (SS)). The FCT targets⁴ have been set to protect the FWPM from the adverse effects of nutrient enrichment and siltation. Above these targets there is significant risk for undesirable changes with associated negative effects on the interest features of the SAC.
11. To address this, the Council are working closely with Natural England (NE) and the Environment Agency (EA) on developments within the Clun catchment. The AONB is currently engaged in a project to improve the FWPM habitat in the Clun Catchment and the Folly Brook is a part of that catchment system.
12. FWPM burrow into sandy substrates, often between boulders and pebbles, in fast-flowing rivers and streams. FWPM require cool, well-oxygenated soft water free of pollution or turbidity. They inhale water to filter out minute organic particles on which to feed. The FWPM life cycle involves an adult stage, living as a filter feeder, a juvenile stage living in sediment, and a larval stage living attached to the gills of trout or salmon before eventually detaching and settling in the riverbed gravels where they grow to adulthood. All life stages are important, as is the viability of the host species of fish. FWPM do not reach reproductive maturity until at least 12 years old and individuals may live for over 100 years, making it one of the longest-lived invertebrates known⁵.
13. FWPM population declines have been caused by factors such as human disturbance from pearl-fishing, water pollution, acidification, nutrient enrichment, siltation, river engineering, and declining salmonid stocks. Many of the UK's rivers now contain only scattered individuals, with no juvenile mussels recorded; such populations are at risk of extinction due to the lack of new FWPM being created. Despite serious declines in both range and total population, the UK is the remaining European stronghold for the FWPM, supporting functional populations in over 50 rivers. In the UK, the FWPM and its habitat are protected by law⁶. In the SAC, I understand that the population of FWPM is around 700; that there is little evidence of population growth and if no action is taken to improve the conditions in the SAC then the FWPM population will only survive for around 20 years.
14. Paragraph 172 of the National Planning Policy Framework (the Framework) states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONB, which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in the AONB.

Planning Policy

15. Policy CS17 of the Shropshire Local Development Framework: Adopted Core Strategy (CS) seeks to ensure that all development: protects and enhances the

³ Plan Ref: 1954/PE/02 Version 1

⁴ Statement of Common Ground, Paragraph 10

⁵ River Clun Special Area of Conservation European Site Conservation Objectives: Supplementary Advice on Conserving and Restoring Site Features (SAC Advice)

⁶ Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and Schedule 2 of the Habitats Regulations

diversity, high quality and local character of Shropshire's natural, built and historic environment; and does not have a significant adverse impact on Shropshire's environmental assets. CS Policy CS18 was not cited by the Council in refusing planning permission but given the copy of the policy that is before me and the discussion at the Hearing, it requires, among other matters, development to enhance and protect water quality, including Shropshire's groundwater resources, and to provide opportunities to enhance biodiversity.

16. Policy MD12 of the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan seeks to conserve, enhance and restore Shropshire's natural assets. This policy requires a project-level Habitats Regulations Assessment (HRA) for all proposals where it is considered that there would be a likely significant effect on an internationally designated site. Permission will be refused where a HRA indicates an adverse effect on the integrity of a designated site which cannot be avoided or fully mitigated.
17. Framework paragraph 170 states that planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils.

Site Operations

18. From early May for around six to eight weeks, Fields C and D are used to rear approximately 40,000 day-old pheasant chicks until they reach six weeks old. To facilitate this, twenty-one coops are erected within Fields C and D at the end of April. The coops are small, wooden structures (about 14.5 metres by 3.5 metres in size) with a roof and attached runs covered in netting (about 30 metres by 18 metres). The coops are heated by gas. The pheasants are housed in the coops for around six to eight weeks. At this point all the pheasant chicks leave the site and are taken to a local Sporting Estates and Game farms.
19. Around 10,000 breeder birds are then typically brought onto the site and kept in Fields C and D until September when they are moved into Fields A and B as they are grown on for egg laying and breeding stock. Once the pheasants move to Fields A and B the coops are washed down and removed. In Fields A and B the pheasants roam within purpose-built enclosures until they are removed from the farm at the end of December. However, this has been as late as January or February depending on ground conditions.
20. The pheasants are contained by tall wire fences within Fields A and B where a cover crop of kale and maize is grown. Sheep graze Fields C and D after the pheasants have left the farm.

Technical Evidence

21. The proposal is not a use directly connected with or necessary to the management of the SAC. Both parties recognise that the proposal is unusual, and that a 'pathfinding' approach has taken place with a view to providing/obtaining robust evidence to assess the proposal's potential influence on the water quality of Folly Brook and in turn the SAC. Framework paragraph 43 says that the right information is crucial to good decision-making, particularly where formal assessments are required such as HRA.
22. As the development started before the appellant started measuring the water quality of Folly Brook, it is impossible to be sure of the pre-development condition of the watercourse for the section running through the site.

23. The River Clun SAC Nutrient Management Plan (NMP) identifies the area around the site to have a bedrock geology of `Ludlow Rocks – Mudstone, Siltstone and Sandstone. Having regard to NMP Map 6, the soil on either side of this part of Folly Brook is Barton 0541I, which is a brown well drained, silty soil that allows surplus winter rainfall to pass downwards through the permeable soil. The large silt and sand content can lead to capping during heavy rain and runoff which causes erosion on slopes. The risk is at its greatest during spring before crop cover is established and during summer storms which follow dry spells. The floodplain of Folly Brook has a soil type of Conway Association 811b. This silty alluvial gley soil is seasonally waterlogged. To the north, the soil type is Manod 611c which is a fine clay loam soil that is free draining, permeable and well-drained. Neither Manod or Conway Association soils pose an erosion risk.
24. The Statement of Common Ground (SoCG) confirms the main parties' agreement that there are active pathways between the appeal site and Folly Brook which could allow SS, SRP and TON not taken up by grass and crops to be washed into the watercourse⁷. There are also pathways such as from bank erosion, ammonia deposition from other livestock in the catchment, and due to SS, SRP or TON being washed into Folly Brook from non-pheasant rearing activities, which are outside of the appellant's control. One potential pathway discussed at the Hearing was a surface water flow which, in periods of high rainfall, can flow across Field B from the junction of two roads to the west down to Folly Brook.
25. Based on my own observations, ground levels generally fall from the C6194 through Fields A and B towards Folly Brook, and from the east through Fields C and D towards Folly Brook. The topography is not universal across the four fields and the land does appear to have a range of different slope angles. This is broadly supported by plan Ref: 1954/PE/08 Version 1 which is based on OS data. However, the plan is not of a scale that would pick up site-specific changes in topography. The appellant explained to me that ground levels slightly rise up towards Folly Brook. Yet, even if true for some of the site, this does not appear to universally apply to the Fields A, B and C. Without a site-specific topographic survey of the site, providing more precise analysis of the ground in and around the site, it is impossible to establish whether or not ground levels help prevent nutrients from being washed into Folly Brook. I therefore do not agree with the appellant's view, based on the available evidence, that the potential pollution pathways from the development to Folly Brook are negligible.
26. The appellant has submitted water quality evidence spanning several years. The appellant has also assessed airborne ammonia⁸ given that large numbers of birds generate air borne ammonia which is highly soluble and can be absorbed by surrounding farmland and may be washed into the river.
27. The water quality evidence submitted can be split into two distinct phases. The first covers the period from October 2015 to February 2017. The Council's decision to refuse planning permission was solely based on the first period of water quality evidence. To support their decision, the Council completed a HRA Screening Report, dated 18 May 2018. While, earlier HRA's were completed by the Council during the planning application, these did not underpin the

⁷ SoCG, Paragraph 11 a - d

⁸ A Report on the Modelling of the Dispersion and Deposition of Ammonia from the Pheasant Rearing Site at Newcastle Court, near Newcastle in Shropshire, 11 July 2017

Council's decision to refuse planning permission. The second period of water quality testing was between August 2018 and July 2019. The results have been shared with the Council, who have provided comments on its content as part of their appeal submissions and at the Hearing.

28. Added to this, the appellant has assessed historical and current nutrient inputs and outputs in terms of Nitrogen which compare the site's use before pheasants first arrived on the land and the current operation (Document 1). The Council have not disputed this evidence, which shows a lower nutrient input into the land, falling from 3729.76 kgN/yr (former land use) to 2291.43 kgN/yr (current land use). No calculations have been undertaken for phosphorus, though I note the appellant's view that they would expect a not dissimilar reduction.

Pre-August 2018 sampling

29. Two monitoring points were established by the appellant to take water samples. The locations of monitoring point A old and monitoring point B are shown on plan Ref: 1954/PE/08 Version 1.
30. The Council and NE cite concerns about the robustness of the first period of water quality evidence submitted by the appellant. Their concerns relate to: the lack of flow data for Folly Brook; inappropriate position of monitoring location A old; a period where birds were not at the site due to disease; incorrect sampling of Phosphate and not SRP; and the level of detection (LOD) not being low enough.
31. The appellant recognises that there are 'reliability' issues with the water quality evidence during this first period, in particularly that before August 2016. Before this date, monitoring point A old was upstream of a tributary. Hence, the bearing that the tributary may or may not have on the water quality of Folly Brook was unknown. Consequently, the appellant confers that the evidence between October 2015 and July 2016 inclusive is of little value. I have no reason to disagree with the appellant's assessment.
32. From August 2016, a new monitoring point A was used to the south of the tributary (A new – Plan Ref: 1954/PE/08 Version 1). Even if I were to agree that this monitoring location is appropriate, it is difficult to understand the bearing that a further tributary (next to Fields C and D) may or may not have on the water quality of the section of Folly Brook measured between August 2016 and December 2016 as measurements from monitoring point T were only taken in January and February 2017. These two samples alone do not represent a meaningful period of sampling to arrive at any definitive conclusion. Aside to this, no pheasants were on the site between 7 July and 23 September 2016 due to disease.
33. Within this period of testing, Total Phosphate readings continued to be taken, but in addition SRP was measured. While, it may be rare for commercial laboratories to test river water for SRP to the LOD applicable to the SAC, the LOD used for SRP was not low enough before August 2018 to allow direct comparisons with the FCT for the SAC. Hence, even if I were to agree with the appellant that the results from August 2016 to February 2017 are 'more reliable' than the period between October 2015 and July 2016, there is significant uncertainty about its reliability for the reasons set out, notwithstanding the absence of any flow data.

34. The appellant's airborne ammonia modelling explains that the predicted maximum annual mean ammonia concentrations at all the nearby wildlife sites are at levels that would normally be deemed acceptable for permitting purposes. The report goes on to say that the deposition to land over the parts of the River Clun catchment area outside the modelling domain is likely to be insignificant. There is no substantive evidence to counter the findings of this report even though it does acknowledge the difficulties of predicting with any certainty the ultimate fate of nitrogen that is deposited to flora and other surfaces. Even so, the deposition rate is a relatively insignificant amount in comparison to the likely normal nitrogen inputs to arable land and pasture in the area.
35. That said, with a view to addressing the Council's concerns, the appellant implemented a series of mitigation measures on the site before January 2018⁹. They were broadly considered to be a good idea by both parties if nutrients were being washed into Folly Brook. Although I do not know the exact date of when the various measures were implemented, January 2018 was the time when they were all referred to as being present on the site.
36. On 12 April 2018, the Court of Justice of the European Union issued a judgment¹⁰ which ruled that Article 6(3) of the Habitats Directive must be interpreted as meaning that mitigation measures (referred to in the judgment as measures which are intended to avoid or reduce effects) should be assessed within the framework of an appropriate assessment (AA) and that it is not permissible to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a European site at the screening stage.
37. The screening stage must be undertaken on a precautionary basis without regard to any proposed integrated or additional avoidance or reduction measures. Where the likelihood of significant effects cannot be excluded, on the basis of objective information the competent authority (CA) must proceed to carry out an AA to establish whether the proposal will affect the integrity of the SAC, which can include at that stage consideration of the effectiveness of the proposed avoidance or reduction measures.

Conclusion on whether likely significant effect alone or in combination

38. However, there is significant uncertainty about the objective evidence submitted by the appellant up until January 2018. A precautionary approach is warranted. Hence, I conclude that the proposal alone is likely to have a significant effect on the internationally important features of the SAC. This view is not altered even though the main parties and I agree that there will be no likely significant effects in combination with other plans or projects.

Effect

39. The SAC is currently failing its FCT for SRP, TON and SS. These targets have been set to protect the FWPM from the adverse effects of nutrient enrichment and siltation, which have caused a population decline of FWPM. FWPM require cool, well-oxygenated soft water free of pollution or turbidity. They inhale water to filter out minute organic particles on which to feed. Added to this, the effects of SRP, TON and SS have a bearing on trout and salmon stocks which are used by FWPM in their larval stage. Consequently, there is a lack of growth

⁹ Shropshire Council Habitats Regulation Assessment, 24 January 2018, Paragraph 3.1.3

¹⁰ Case C-323/17

in the FWPM population.

40. Having regard to the objective evidence submitted before January 2018, I cannot rule out the possibility that the proposal is or could be adding to the significant risk for undesirable changes with associated negative effects on the FWPM of the SAC through SRP, TON and SS. Therefore, there is uncertainty as to whether the development alone is or would be likely to have significant adverse effect on the integrity and conservation objectives of the SCA.

Mitigation measures

41. Part 2 of SAMDev Policy DM12 states that proposals which are likely to have a significant adverse effect, directly, indirectly or cumulatively, on any of the following: the special qualities of the Shropshire Hills AONB; and priority habitats will only be permitted if it can be clearly demonstrated that: a) there is no satisfactory alternative means of avoiding such impacts through re-design or by re-locating on an alternative site and; b) the social or economic benefits of the proposal outweigh the harm to the asset. In all cases, a hierarchy of mitigation then compensation measures will be sought.

Mitigation measures implemented before January 2018

42. The location and nature of the mitigation measures implemented by the appellant before January 2018 are detailed on a Mitigation Plan – May 2017. They include: fenced enclosures, a ditch between Fields C and D, a buffer strip between 4 and 10 metres in width, a grassed buffer strip in Fields C and D, ploughed furrows in Fields A, C and D, and a steep slope and berm in Field B. I observed each of these during my site visit.
43. These mitigation measures aim to intercept any run-off, prevent it from entering Folly Brook and encourage infiltration into the ground. Principally, they seek to address the potential for SS, SRP and N to be washed into Folly Brook by eliminating flow pathways that might carry sediment laden water into Folly Brook. SRP is generally transported adhered to SS particles due to its insoluble nature. Two more vulnerable areas¹¹ were identified by the appellant as having the potential for surface run-off to occur following exceptionally heavy rainfall. One of these is roughly in the path of the overland flow that can occur across Field B from the junction of the two roads to the west.
44. Based on the mitigation measures, the appellant says that there are no feasible pathways for surface water run-off to enter Folly Brook. However, the appellant recognises that there are no detailed specifications available of the mitigation measures, in terms of their construction or maintenance arrangements.
45. Aside to the physical mitigation measures, the appellant has removed land from Nitrogen fertilizer and farmyard manure application. This is with a view to 'off-setting' Nitrogen inputs and outputs, including in the form of ammonia. The areas which this applies to are detailed on a Mitigation Plan dated 22 December 2017. Document 1 bears out the appellant's approach in this regard.

August 2018 to July 2019 sampling

46. The second period of water quality testing has occurred with the mitigation measures discussed above in place. The main parties agree that the correct LOD for SRP has been used, since a suitable laboratory was found by the

¹¹ Plan Ref: 2284/WQM/01

- appellant. There is also agreement about the locations of sample points T and B, but disagreement remains about the location of monitoring point A new.
47. The rationale for monitoring point A new is to establish a baseline for Folly Brook before the development can potentially affect its water quality. The Council and NE raised concerns that monitoring point A new is part way down Field A, and its location should be to the north of Field A further upstream. I accept the appellant's view that there would be difficulties and uncertainty with whichever location is used given the shape of the site, and due to the use of land to the north for grazing by cattle and sheep. There are also difficulties in gaining access to a location further upstream. On balance, I accept the appellant's view that monitoring point A new is a suitable location.
48. Across the last year, monthly samples have been taken typically at the start of each month. I agree with the main parties that there is an inherent degree of uncertainty in terms of measuring water quality given the number of variables involved. Variance is inevitable as Folly Brook is part of a natural water system which is affected by variable weather conditions. The appellant accepts that there will be variance in the catchment due to the topography and climate.
49. As I explained earlier, there is no site-specific topographic survey before me. It is therefore difficult to be certain about the location and extent of the appellant's mitigation measures, and whether for instance they would address the surface water flow which can at times traverse across Field B to Folly Brook. There are also no records of the weather conditions at the time of each monthly sample. Even though this information would only represent a snap shot in time, it may provide a context as to why particular results have been obtained, especially if there had been a rainfall event. It would be difficult for monthly spot samples to pick rainfall events up, unless they occurred at the time when the sample is taken. In terms of the SS samples, I note higher figures are recorded during winter months when rainfall is typically at its greatest. This time of year is sensitive for trout and salmon eggs as a result of the watercourse being diluted. Thus, there could be possible implication for their stocks and consequently the larval stage of FWPM and any potential population stabilisation or recovery.
50. During the planning application, the Council asked the appellant for a six-month period of water quality samples. The appellant has endeavoured to fulfil that request in terms of the period of sampling undertaken. Even so, the NMP explains that where possible, compliance to the FCT targets should be assessed using 12 monthly samples taken over a period of three consecutive years. At best, despite monitoring Folly Brook since October 2015, the appellant can only rely on data from August 2018 in respect of SRP (12 monthly samples), and from January and February 2017 for SS and TON (14 monthly samples).
51. While more frequent sampling may be unusual, and proportionality is needed, this would, in tandem with other evidence sources, have provided a broader evidence base capturing any rainfall or flood events that typically occur over shorter periods of time. Details and analysis of the mitigation measures would have widened this collective evidence base further and have helped understand the effect of SS, SRP and TON. I recognise that there would be a financial implication for more frequent sampling, and there may well be issues with monitoring equipment becoming blocked if left on site, but samples could still be taken in person, and the onus does rest, in this case, with the appellant to provide the objective evidence to support their case.

52. The NMP explains that the precise importance of high flow vs low flow events in terms of driving deposition is not currently understood for the River Clun. At the Hearing there was considerable discussion about the use and relevance of flow data. The appellant confirmed that they have not measured the flow of Folly Brook as they consider that it could present errors due to the site's physical constraints, the flow of Folly Brook, and in terms of issues with ensuring measurements are taken at the correct depth. They also explained that the EA measure flows on a catchment scale and not on a single watercourse scale such as that suggested by NE.
53. The availability of flow data varies across the UK, and the NE accepted, through questioning, that having flow data available for Folly Brook would not conclusively, on its own, rule in or rule out potential nutrient and sediment loading of Folly Brook. However, NE did suggest that a 'driver' could be used to take water flow measurements and by having flow data available, it would reduce the potential variables and understand the proposal's influence on the water quality of Folly Brook. Both parties' make valid points, but by having flow data available, in tandem with the other strands of evidence I have referred to, it would help understand the proposal's effect.
54. The FCT targets apply to the SAC downstream of the site. Comparisons have been drawn by the appellant between their results over the last year against the FCT targets. However, NE say that a lower target should be applied to Folly Brook given that it is further up the catchment, and there are other parts of the River Clun catchment to feed into the SAC which may affect whether the short or long term FCT targets could be met. While their approach is logical, NE accepted that there is no fixed lower target that can be applied to test the appellant's water quality evidence.
55. The NMP indicates that the Folly Brook catchment contributes roughly 5% of the total River Clun catchment load for Phosphate; 4% for Nitrogen; and 2 or 3% for Sediment load. In this regard, I agree with the Council and NE that the results ought to be apportioned to the overall River Clun catchment.
56. The results, in terms of SS, SRP and TON, have been averaged across the year. I understand NE's point about this not being appropriate, especially in light of SS typically being washed into watercourses during high rainfall or flood events. Nevertheless, averaging the results allows comparisons to be drawn against the FCT targets. Generally, the results show a fall in SS, SRP and TON from monitoring points A to B. That said, the TON average is higher than the FCT target and even if pre-August 2018 data using monitoring point A new is used, this does not result in a change to the TON average against the FCT.
57. While there may not be a discernible change in TON as a result of the appeal proposal, for the various reasons explained above, there are still uncertainties about whether the proposal is in itself likely to have a significant effect on the SAC even if some of the issues experienced were outside of the appellant's control or not as a result of their efforts to provide the right information.
58. I note that the appellant is of the view that more sediment would be mobilised if cattle and sheep were kept on the site compared to the proposal. However, there is no substantive evidence to demonstrate this. Nor would it change my view around the uncertainties around the proposal for the reasons set out.

Effectiveness of mitigation measures pre-January 2018 and the use of planning conditions

59. NE explained at the Hearing that the implemented mitigation measures may help reduce the potential of nutrients being washed into Folly Brook. However, NE also said that there is no one mitigation measure which would eradicate the issue as there will always be an inherent loss into the water catchment. For instance, sediment can fill up traps such as ditches, ploughed furrows and buffer strips. This can result in the storage of a high source of nutrients, which have the potential, especially if there is a rainfall event, to either be washed into the watercourse or be leached through the soil.
60. While some of the measures are logical insofar as addressing a potential effect, we are now some time on since their implementation. Despite visual checks by the appellant, there are no construction details of the mitigation measures or substantive evidence setting out what these measures are capable of and whether they have been, are or are likely to remain effective in the future.
61. The main parties have discussed the use of prospective conditions. I have had regard to their respective comments. As part of the suggested planning condition for a Water Quality Monitoring and Mitigation Scheme, provision is made to obtain details of the management of the implemented mitigation measures. The suggested wording is not precise enough to measure compliance. In any event, for the reasons set out in the preceding paragraph, I am not satisfied that they have or will in the future achieve the intended result and clarify that the proposal would not be likely to have a significant effect on the SAC.
62. A planning condition is suggested to secure a detailed mitigation strategy in respect of land to be removed from Nitrogen fertilizer and farmyard manure application. The purpose behind this condition is to off-set the effects of the appeal scheme. The Cooperatie Mobilisation judgment¹² raises issues around whether European sites should be allowed to further deteriorate if they are failing in their conservation target. The SAC is in unfavourable declining condition and the TON results are above the FCT target. That aside, the main parties agreed that the suggested condition could be more precise, in terms of obtaining a specification, more detailed plans and management arrangements. The suggested condition would also pose enforceability issues as there is no requirement to keep records of any Nitrogen fertilizer and farmyard manure which, based on the Mitigation Plan dated 22 December 2017 could still take place on Fields C and D. As such, I am not certain that this suggested mitigation measure could overcome the likely significant effect.
63. I am not therefore of the view that these mitigation measures and the suggested planning conditions could successfully mitigate or overcome the likely significant effect on the SAC from the proposal.

Proposed mitigation measures

64. Further mitigation measures are proposed in the SoCG. Both parties accepted in questioning that the use of reed beds to filter water from furrows and ditches could be difficult to manage. Such details could be secured through a planning condition. Similarly, a planning condition could potentially secure wider and

¹² Coöperatie Mobilisation for the Environment UA and Vereniging Leefmilieu v College van gedeputeerde staten van Limburg and College van gedeputeerde staten van Gelderland; Cases C-293/17 and C-294/17

more vegetated buffers to Folly Brook. However, there are no precise details of where these measures would be located or their specification and future management arrangements. I am also unclear to what extent their contribution may or may not be to mitigating harm to the SAC. A planning condition has been suggested to secure details of these, but it lacks precision and there is no review mechanism to allow a potentially failing measure to be remedied. Hence, I cannot be certain that the further mitigation measures would succeed.

65. The appellant may be able to commit to using the ford across Folly Brook less or not at all, but there is no mechanism before me to secure this, and in any event, I understand that a neighbouring farmer has an emergency right of access across the ford. Thus, it would be difficult to reduce or remove silt generation by this pathway.
66. A temporary planning permission has been suggested for a period of three years. A planning condition to control this proposal is intrinsically linked to the condition around the Water Quality Monitoring and Mitigation Scheme and a condition requiring the use, structures, equipment and materials brought onto the land to be removed within a set period of time if certain requirements are not met. Given my earlier findings on the Water Quality Monitoring and Mitigation Scheme, a temporary planning permission would not be appropriate in this case.
67. In support of their case, the appellant has referred me to the appeal decision at Heath Farm¹³. The scheme here was to expand the poultry business. Even if I were to consider it to be directly comparable to the appeal scheme, I note that NE and the Council in this case considered this scheme to be acceptable subject to mitigation measures. This is not the case here as I have concerns about the proposal's effect and the mitigation measures. It is also appropriate, given the specific nature of the proposal to consider its effect on its own planning merits.
68. I am not of the view that the suggested planning conditions around the proposed mitigation measures could successfully mitigate or overcome the likely significant effect on the SAC from the proposal.

Alternative solutions

69. The purpose of the alternative solutions test is to determine whether there are any other feasible ways to deliver the overall objective of the plan or project which will be less damaging to the integrity of the SAC. The applicant is primarily responsible for identifying alternatives which must be considered objectively and broadly.
70. At the Hearing, the appellant explained to me that other fields within their control were not suitable to rear pheasants, and that a reduced scale of operation would not be viable. They also explained that over time changes have been made to which crops are sown, where livestock graze and general management of the land once the pheasants are removed from site.
71. Despite the changes to the operation and management of the site, the appellant accepts that the use could take place at another location, though there would still be a need to be nearby for welfare purposes. Hence, there is no substantive evidence before me that disproves the Council's view that there are likely to be alternative sites for producing pheasants for game shoots

¹³ Appeal Decision Ref: APP/L3245/W/16/3146508

elsewhere in the county. There is also no evidence to suggest that another farm business outside of the River Clun catchment could not feasibly deliver the same objective as the proposal whilst avoiding any likely effect on the SAC.

Imperative reasons of overriding public interest

72. I note the benefits of the proposal advanced by the appellant in terms of supporting their endeavours to foster children, to build their work ethic and empathy for animals in a safe environment together with the employment provided for people in the village whilst diversifying their farming business. In this regard, the proposal would accord with CS Policies CS5 and CS13 as well as Framework paragraph 83. That said, even if I were to conclude in the appellant's favour insofar as the other aspects of the case, these would not, having regard to definition of the term¹⁴, be imperative overriding reasons even if they are local public benefits.

Conclusion on the main issue

73. Even though the proposal would accord with CS policies CS5 and CS13 and Framework paragraph 83, for the reasons set out above, I conclude that that there is a likely significant effect on the SAC from the proposal alone. Having undertaken a project-level HRA, significant harm to biodiversity in the SAC and the AONB resulting from the development cannot be avoided, through locating on an alternative site with less harmful impacts, or adequately mitigated. In such circumstances, Framework paragraph 175 says that planning permission should be refused.

74. I therefore conclude that the proposal does not accord with CS policies Policy CS17 and CS18, SAMDev Policy MD12 and Framework paragraphs 170 and 175. Collectively, these policies seek all development to protect and enhance Shropshire's natural environment, including its water quality and to provide opportunities to enhance biodiversity. Permission will be refused where a HRA indicates an adverse effect on the integrity of a designated site which cannot be avoided or fully mitigated.

Other matters

75. Although the coops are visible from the lane to the west, the visual effect of these is similar to other agricultural activities taking place in the area. There is also a good interface distance between the site and the scattering of residential properties in the area. As such, I am of the view based on the evidence before me that the proposal does not cause harm to nearby residents living conditions in terms of odour, noise, vehicle movements, and vermin.

76. I understand the appellant's efforts and their frustration with the opportunity to discuss and resolve issues around evidence gathering with the Council and NE during and after the planning application was considered, and with NE's stance at the Hearing. Nevertheless, it is open to the appellant to produce the necessary information with a view to finding a solution.

Conclusion

77. For the reasons set out above, I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR

¹⁴ Council Statement of Case, Appendix SC4

APPEARANCES

FOR THE APPELLANT:

Peter Yeoward
Sarah Belton
Lawrence Brown
Sarah Faulkner

Appellant
Hafren Water
Hafren Water
NFU

FOR THE LOCAL PLANNING AUTHORITY:

Tim Rogers
Sue Swales

Shropshire Council
Shropshire Council

INTERESTED PERSONS:

Vicki Howden
Grady McLean

Natural England
Natural England

DOCUMENTS

Documents submitted at the Hearing

- 1 Current and historical nitrogen inputs and outputs
- 2 Colour copy of Habitats Regulation Assessment, Shropshire Council, 18 May 2018



Costs Decision

Hearing Held on 14 August 2019

Site visit made on 14 August 2019

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2019

Costs application in relation to Appeal Ref: APP/L3245/W/3216559 Newcastle Court, Craven Arms, Shropshire SY7 8QL

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Peter Yeoward of J.C. Yeoward and Co for a full award of costs against Shropshire Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for a seasonal change of use from agriculture to site 21 pens and runs in fields C and D on the submitted plan for rearing pheasant chicks from the 1st May and to growing-on the pheasant poults for egg laying and breeding stock until end of February in fields A and B on the submitted plan.
-

Decision

1. The application for an award of costs is refused.

The written submissions for Mr Peter Yeoward

2. The applicant's application for an award of costs is based on the Council's alleged unreasonable behaviour linked to the refusal of planning permission, which the applicant says is ill founded and not supported by evidence. As a result, the applicant contends that they have incurred unnecessary costs in pursuing the appeal.
3. It is submitted by the applicant that the Council have caused delay to the development which they had previously suggested would be acceptable until a very late response by Natural England (NE) led the Council's officers to change their approach and refuse the planning application. However, in doing so, the applicant says that the Council and NE have failed to substantiate their concerns and have not thus substantiated the reason for refusal as no evidence has been provided of the likely probability of adverse effects occurring. The applicant considers that their evidence addresses this alleged unreasonable behaviour. Furthermore, this evidence is said to address the Council's various changes of position in relation to the Council's Habitats Regulations Assessments (HRA); which are said by the applicant to be further evidence of unreasonable behaviour by the Council.

The written response by Shropshire Council

4. In response, the Council say that the applicant's application for an award of costs is completely unfounded and not supported by the facts relating to this case. The Council strongly contest the application for an award of costs and totally refute that either, and certainly not both, of the tests for an award of costs are met.

5. Under Section 63 of the Conservation of Habitats and Species Regulations 2017, the competent authority (CA) must make an appropriate assessment (AA) before granting planning permission of the implications of the plan or project for that site in view of that site's conservation objectives. As part of this, a CA may reasonably require information from the applicant for the purposes of the assessment or to enable it to determine whether an AA is required. In addition, the CA must for the purposes of the assessment consult NE and have regard to any representations made by that body within such reasonable time as the authority specifies. A CA may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be). Under the Directives any impacts can be over-riden by reasons relating to human health, public safety or beneficial consequences of primary importance to the environment, but only once the potential impacts have been identified, quantified and considered.
6. Despite the considerable time taken through the application process, with ongoing dialogue between the Council, the applicant and NE, the applicant failed to provide satisfactory evidence to enable proper assessment of the ecological impacts of the proposal. This was despite the use applied for continuing through much of that time, in part to enable data capture and assessment rather than relying on modelling. Hafren Water only became involved in this late on in the application process.
7. While the Council at one point indicated that the proposal was acceptable, this was only on the basis that the potential impacts on the Special Area of Conservation (SAC) were evidentially of no consequence or could be adequately mitigated. However, that position has never been reached. Reference is made to a very late response by NE, but at no point in their five consultation responses (from April 2013 to May 2018) did NE deviate from their position of objecting to the proposal and requiring further information. The applicant was aware of this position. The Council did discuss with the applicant and NE the possibility of a temporary consent to allow for more detailed water quality assessment but this was ultimately rejected by the applicant as being commercially unacceptable.
8. In response to the applicant's view that the Council and NE have failed to substantiate their reason for refusing planning permission, the Council say that this is simply not true. The Council and NE have both invested considerable officer time (and public money) into working with the applicant to try and identify what evidence was required to enable a potentially positive outcome. It is important to bear in mind that the onus lies with the applicant to demonstrate that there would be no adverse impact on the SAC by whatever means possible and not the Council. The Council has in making its judgements needed to have regard to NE's comments and should therefore be able to rely on their expert advice. During the planning application the Council did advise the applicant to liaise directly with NE through their discretionary advice services but this was consistently ignored.
9. The Council accept that at two points in the lengthy planning application process that they did draft positive HRA documents. The first in August 2014 was intended to draw comments from NE that had been lacking to that point. The second in January 2018 was designed to support a potential temporary consent (and further monitoring) but this was later rejected by the applicant.

10. In summary, the Council say that it was not, and never had been, in a position to positively determine the planning application. This was despite working with the applicant and NE to try and get to such a position. This was ultimately confirmed by the applicant in an email received after the decision had been taken. To now claim that the Council has acted unreasonably and has put the applicant to unnecessary expense is absurd, and in itself unreasonable.

The submissions made at the Hearing for Mr Peter Yeoward

11. At the Hearing, the applicant made several other points. They said that based on what we have heard today, NE have said that no monthly samples would provide the certainty required. Therefore, all the work over the last six years seems to be in vain based on the scope of works undertaken if it would never meet the requirement that NE need to have certainty. That is unrealistic for us to undertake the work to reach the certainty that is proportionate without undertaking a university scale research project.
12. In their final submissions, the applicant said that we felt we would have liked the opportunity to question NE's conclusions that led to the refusal. The NE response was received 16 weeks after the original position HRA was prepared which is well after the statutory timeframe for a response. We received an amended HRA on 21 May 2018 and responded to the Council on 22 May 2018 and the decision was made on 23 May 2018 without any further discussions. After six and a half years of difficult scientific evidence we felt we would have liked to question NE response including the area surrounding an intensification, significantly when this was unfounded. It was my understanding that Eric Steer from NE had agreed that a temporary planning permission would be acceptable. So, NE have not always maintained their objection, subject to conditions. The applicant's technical experts have never had the opportunity to discuss with NE the details and as Mr Rogers said, the Council was caught in the middle and feel that the appeal could have been avoided if technical experts had been given the opportunity to meet and discuss.

The submissions made at the Hearing by Shropshire Council

13. At the Hearing, the Council said that it could not answer for NE and whether or not there are any mitigation measures that would provide the certainty that is required. Throughout the protracted time this application has been with us there has clearly been changes in personnel at NE, but they have maintained their objection through the process of the planning application and given that the Council didn't have the in-house expertise we have been reliant on NE to assess the proposals which ultimately led to the decision to refuse the proposal that has resulted in the appeal. You'll see that the Council have effectively been stuck in the middle of a dispute between technical experts about potential impacts. You'll see that the Council tried to work with the applicant over several years and the situation was complex to assess the pheasant rearing effect as we don't have a straightforward approach to deal with the activity.
14. The Council continued to say that we have always acknowledged this is a use you would find in a rural agricultural area and not an agricultural use as it needs planning permission, hence the Hearing today, even if it is similar to those uses. The fact that it needs planning permission is not disputed. In fact, it would be acceptable in other locations and policy supports this and evidently NE do not consider it to be the right location and this led to the decision. As part of their cost's submission, the applicant indicated that the Council acted unreasonably in issuing its decision quickly and shortly after receiving

responses from NE after Dr Sue Swales HRA. However, at that point there had been discussions for six years and the Council reached a point where it was clear that it was going to be very difficult and unfairly onerous for the applicant to meet the need to demonstrate no harm. The Council was also mindful that the use was not quite but approaching ten years since it started and thus potentially becoming lawful through that being the case. That is why it was considered appropriate and quite reasonable to refuse planning permission and specifically this is what we did after the last NE response. In summary, the Council doesn't accept that it has acted unreasonably and the tests for an award of costs have not been met.

Reasons

15. The Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. In order to be successful, an application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. Parties in the appeal process are normally expected to meet their own expenses. The Guidance also advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals.
16. It is evident that the applicant, the Council and NE have spent considerable time and resources over a number of years in considering the proposal. All concerned acknowledged the difficulties associated with obtaining and providing satisfactory evidence to support the development. This was in the context of an activity taking place in a location with a particular set of circumstances that have not evidently been easy to grapple with. I have no doubt that the Council worked with the applicant over a number of years and had tried to look positively on the applicant's proposal. By the Council's own admission, they did not have the specialist in-house expertise to form its own view on the proposal. This is understandable. As a result, the Council's stance and decision to refuse planning permission was, and has remained to be the case, reliant on NE's technical expertise. NE provided multiple consultation responses before the Council refused planning permission, before the Hearing and attended the Hearing itself.
17. In this case, the onus to demonstrate the proposal's effect or likely effect on the SAC was the applicant's responsibility. It is not the Council's. However, it is abundantly clear that there could have been a greater degree of dialogue and advice provided to the applicant through the engagement of technical experts so that a consensus was reached about issues such as monitoring locations, methods, sample frequencies, and the provision of supporting documentation. Given the ongoing environmental issues experienced associated with the SAC and the steps being taken to bring about recourse, it was in everybody's interests for the effects of the development to be properly understood. While, disagreement may have remained, at the very least, proper engagement may have provided a comprehensive suite of evidence that could account for the inherent degree of uncertainty associated with assessing complex hydrological issues. It may have also shortened the 'pathfinding' process that both parties undertook in trying to understand the potential effects of the proposal.

18. In this regard, the Council could have potentially done more to encourage or facilitate the engagement of technical experts. However, it is important to say that there was no easy or straightforward answer in this case, and while there may be lessons that can be taken from this scheme, the Council has not caused the appellant to incur unnecessary or wasted expense given that the onus is theirs to bear in terms of producing the evidence. While evidence does need to be proportionate, considerable detail is warranted in this case given the range of factors which need to be accounted for in relation to the SAC.
19. It is regrettable that there appears to have been a variety of advice provided over the course of the scheme's consideration. Even so, this is a reflection of the case's complexity, the unknowns of preserving the Fresh Water Pearl Muscle and the SAC, the involvement of various professionals and different tranches of evidence, including mitigation measures over a number of years. I am of the view that the Council acted reasonably in reaching a decision on the proposal, given that it had been subject to consideration of a number of years. While the applicant may have wished to discuss the scheme further, the Council does also have a duty to determine planning applications, despite my views about the greater engagement and agreement around surveying.
20. Due to the submission of various pieces of evidence over time, multiple HRA's were produced by the Council. While, one of the HRA's may have been positive, and tantamount to supporting a temporary planning permission, the Council was entitled to take account of NE's comments, and I note that their decision to refuse planning permission was evidently supported by a subsequent specific HRA. It is also incumbent upon the decision-maker to make their decision based on the circumstances that are before them at the relevant time.
21. By the applicant's own admission their earlier period of sampling was unreliable, and some of the later evidence, whilst more reliable, still had its uncertainties. This was the evidence available to the Council when they refused planning permission. While the applicant's most recent water quality evidence is 'more reliable', this was only undertaken after the Council refused planning permission, and hence the Council has only therefore responded to an evolving set of circumstances.
22. While NE expressed a view at the Hearing about whether the applicant would ever be able to provide technical evidence with the degree of certainty required, this was NE's view and theirs alone. NE are not the subject of the application for an award of costs. Hence, even though I understand the applicant's frustration, the Council have not behaved unreasonably in firstly refusing planning permission, and secondly substantiating their case at appeal given that both parties agreed that the case is complex. In short, there was no easy or straightforward answer to provide the necessary degree of certainty about the proposal's effect on the SAC and the Council was entitled to reach the view that they did, taking into account the view of NE.

Conclusion

23. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

Andrew McGlone

INSPECTOR

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Appeal Decision

Site visit made on 30 July 2019 by John Gunn DipTP Dip DBE MRTPI

Decision by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 September 2019

Appeal Ref: APP/L3245/W/19/3228282

Hill Cottage, Top Road, Pontesbury, Shrewsbury SY5 0YE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Dave Edwards against the decision of Shropshire Council.
 - The application Ref 18/05095/FUL, dated 1 November 2018, was refused by notice dated 19 March 2019.
 - The development is proposed replacement dwelling and vehicular access formed from Top Road with separate garage.
-

Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matter

3. The Council has confirmed that the appeal site is not within the Green Belt and Policy MD6 of the Shropshire Council Site Allocations and Management of Development Plan 2015 (SAMdev) is not therefore relevant to the appeal proposal. I have not taken this policy into account in my consideration of this appeal.

Main Issues

4. The main issues are the effect of the proposal on:
 - the character and appearance of the area, and
 - the provision of the type and mix of housing in the area.

Reasons for the Recommendation

Character and Appearance

5. The appeal property is located in the open countryside amongst a ribbon of development extending southwards from Pontesbury Village. The appeal site

sits between Top Road and Lower Road with vehicular access being gained from Top Road, a narrow track which serves several residential properties and two churches. The area is rural in character with a mix of dwelling types and designs within close proximity to the appeal site.

6. The existing property comprises a small cottage, with 2 bedrooms in the roof space. Although elevated above Lower Road it is largely screened from public view by existing vegetation. Existing trees and hedgerows screen the property from the south so that it is not prominent from Top Road. Given its modest size and position on the plot the appeal site makes a significant contribution to the rural character of the area.
7. The appeal proposal would occupy a much larger footprint than the existing property, being deeper, longer and higher. Changes in the ground levels to accommodate the proposal would reduce the visual impact of the scheme, as would existing vegetation upon the site and along Lower Road. However, even taking these matters into account there is a high probability that the new dwelling would have a greater visual presence in the landscape and street scene than that which presently exists. The new dwelling would erode the largely open character of the appeal site and the contribution it makes to this rural area. It would have an urbanising effect upon this area of countryside. Moreover, the existing landscaping in the area cannot be relied upon to reduce the visual impact of the proposal, particularly that along Lower Road which appears to be outside of the control of the appellants.
8. Whilst acknowledging that the property could be extended under permitted development rights and buildings could be erected within the garden, such extensions and outbuildings would be likely to be single storey. They would be likely to have significantly less visual impact than the new dwelling. Consequently, they would be unlikely to have the same harmful effect on the character and appearance of the area as the new dwelling. In this regard, the likely fallback position does not lead me to conclude differently about the harm the new dwelling would cause to the character and appearance of the area.
9. I also acknowledge the existence of large detached dwellings on the Lower Road frontage. Whilst noting their presence, I have not been provided with detailed drawings of the developments, or the individual circumstances of those cases. Accordingly, I can therefore only attach very limited weight to this matter in my consideration of this appeal. Each planning application and appeal is determined on its merits.
10. I therefore conclude that the proposed dwelling would harm the character and appearance of the area, and consequently there would be conflict with Policies MD2 and MD7b of the SAMdev and Policies CS5, CS6 and CS17 of the Shropshire Local Development Framework: Adopted Core Strategy (March 2011) (CS) which jointly require development to respect and enhance local distinctiveness and deliver high quality development.

Type and Mix of Housing

11. The Council is concerned that it should control the size of replacement dwellings in the countryside to maintain a supply of more affordable dwellings. This is confirmed in the Shropshire Council's Type and Affordability of Housing Supplementary Planning Document, Type and Affordability of Housing, 2012 (SPD). Whilst acknowledging that the proposed dwelling would be likely to command a higher value than the existing dwelling, once constructed, I have insufficient evidence to say that the existing property is affordable, and consequently I cannot conclude that the development would conflict with Policy CS11 of the CS, Policy MD7a of the SAMdev or the SPD which jointly seek to create mixed, balanced and inclusive communities.

Other Matters

12. The appellant has indicated that he wishes to build the new dwelling for himself and his family as he is from the village and the family's support network is based there. The National Planning Policy Framework requires that local planning authorities should give enough suitable development permission for self and custom build properties to meet the identified demand. However, as I have been presented with no evidence on what demand, or supply, of serviced plots currently exists in the locality, I am only able to give this matter limited weight. This matter does not outweigh the harm that I have identified.

Conclusion and Recommendation

13. For the reasons given above, I conclude that the development would harm the character and appearance of the countryside, and there are no other material considerations that outweigh that harm. Consequently, I recommend that the appeal should be dismissed.

J Gunn

APPEAL PLANNING OFFICER

Inspector's Decision

14. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

RC Kirby

INSPECTOR

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Appeal Decision

Site visit made on 29 July 2019

by A Denby BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2019

Appeal Ref: APP/L3245/W/19/3230291

Plot adjoining The Lindens, 25 Duke Street, Broseley, Shropshire TF12 5LS

- 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 Donald Patter against the decision of Shropshire Council.
 - The application Ref 17/04603/OUT, dated 1 August 2017, was refused by notice dated 12 February 2019.
 - The development proposed is the construction of a new detached dwelling to be in the style of a coach house.
-

Decision

1. The appeal is allowed, and outline planning permission granted for the construction of a new detached dwelling to be in the style of a coach house at Plot adjoining The Lindens, 25 Duke Street, Broseley, Shropshire TF12 5LS, in accordance with the terms of the application Ref: 17/04603/OUT, dated 1 August 2017, and subject to the conditions set out in the attached schedule.

Procedural Matter

2. Whilst an indicative layout plan has been submitted it is Outline planning permission which is sought, with all matters reserved. I have determined the appeal on this basis and any plans identifying a layout have been considered as indicative only.

Main Issues

3. The main issues are the effect of the proposed development on the:
 - 1) Character and appearance of the surrounding area, and the setting of the Broseley Conservation area;
 - 2) Living conditions of occupiers of The Lindens, Duke Street, with particular regard to external amenity space.

Reasons

Character and appearance.

4. Whilst The Lindens is within the Broseley Conservation Area (CA) the appeal site, although directly adjacent, is not within the CA. The site is set back from the main road and accessed via a single width access. There is a detached garage and shed within the site which is currently utilised as part of the residential garden for the adjacent property, The Lindens.

5. The surrounding residential development both within and outside the CA has a predominately tight and compact character, with some properties being sited directly at the back of the road with others set back or within a courtyard arrangement. Considering the siting and size of the appeal site the proposal for a single dwelling would not be at odds with the established character of the surrounding area.
6. The existing access road to the site and existing setback of The Lindens does provide a gap within the built development when viewed from Duke Street. However, considering the setback of the site any proposed dwelling would not be overly prominent and the appreciation of this gap within the streetscene would not be substantially altered as a result of the development. I consider sufficient visual separation could be achieved as part of the detailed design, siting and layout to ensure that the development would not result in a cramped appearance.
7. The submission does not indicate the removal of any existing landscaping and garden areas would be retained at both The Lindens and the appeal site. The provision of sufficient green space and relief between built forms to avoid the development appearing overly cramped or congested could be addressed as part of the detailed design.
8. Whilst any dwelling erected on the site may be visible from the wider surrounding area it would be viewed in the context of the existing surrounding compact development. There is therefore no reason, in principle, why a dwelling here would appear incongruous or out of keeping with its surrounds or adversely impact on any views within or to the CA.
9. I therefore find no harm to the character and appearance of the surrounding area or the setting of the Broseley CA. As such the proposals accord with Policies CS6 & CS17 of the Shropshire Core Strategy and MD2 of the Site Allocation and Management of Development (SAMDev) Plan which seek to ensure that developments achieve high-quality design and protect the local character of the built environment. It would also accord with the aims of Section 12 of the National Planning Policy Framework which seeks to achieve well-designed places.

Living conditions.

10. Whilst the development of the site would result in a substantial reduction to the current curtilage of The Lindens, the dwelling would still sit comfortably within a large plot. There would be good separation to all site boundaries from the dwelling itself and a substantial rear garden area would also be retained ensuring no resulting harmful impact to the living conditions of the existing occupants.
11. The appeal site is similarly of a reasonable size and I consider that subject to detailed design considerations as part of reserved matters submissions, an acceptable relationship to the adjacent properties could be achieved so as not to have any significant harmful impacts to living conditions.
12. The Council Policies CS6 & CS17 of the Shropshire Core Strategy and MD2 of the Site Allocation and Management of Development (SAMDev) Plan do not specifically address impacts on living conditions and accordingly they do not apply in this case. However as detailed above I have found no conflict with

these Policies which seek to ensure that developments achieve high-quality design and protect the local character of the built environment.

13. I have found that there would be no harm to the living conditions of the occupants of The Lindens and, as such, the proposals accord with the aims of Paragraph 127(f) of the Framework which seeks to ensure that development provides a high standard of amenity for existing and future users.

Other Matters

14. I note references to Policy H5 within the Broseley Town Council Town Plan 2013-2026. Whilst this would reasonably apply to development within the CA, as identified above the site is adjacent to the CA and not within it. Accordingly, the policy does not apply in this case.
15. Although the reason for refusal only refers to the impacts on the occupants of The Lindens I note that concerns have been raised in relation to the impact on the living conditions of other adjacent properties. The existing access provides separation to properties on Duke Street and substantial boundary hedging exists to the properties on Birchmeadow Road and Four Winds Mobile Home Park.
16. There is nothing before me to suggest that a 2-storey development could not be achieved or would be out of keeping with the surrounding area. As above, I consider that subject to detailed design considerations, as part of reserved matters submissions, an acceptable relationship to the adjacent properties could be achieved so as not to have any significant harmful impacts to living conditions.
17. I have noted concerns raised in relation to impacts of construction on adjacent properties and acknowledge the potential for shallow mine working to be present on the site. I have imposed a condition requiring further detail on this matter to be submitted to ensure any impacts are fully considered and addressed.

Conditions

18. The Council has suggested a number of conditions which I have considered against the advice in the National Planning Policy Framework and Planning Practice. As a result, I have amended some of them for consistency and clarity, and omitted others.
19. I have specified the standard conditions relating to the submission and timing of reserved matter applications. I have not included a condition to state which matters are not granted consent as I consider this is addressed by the reserved matters condition to be imposed and is therefore not necessary.
20. Whilst there is reference within the Council's submitted documents to a condition restricting the proposed dwelling to no more than 1 ½ storeys this is not referenced within the Council's appeal statement or suggested conditions. Nonetheless I have considered this condition. As detailed above there is nothing before me to suggest that a 2-storey development could not be achieved or would be out of keeping with the surrounding area. It would therefore be unreasonable, as part of this outline application, to restrict the height of the development and as such I have not included this condition.

21. To protect the living conditions of occupiers of neighbouring properties it is necessary to include a condition in respect of hours of construction. Considering the potential for shallow mine workings to be present within the site it is necessary to secure further site investigations in the interests of land stability. In the interests of biodiversity I have imposed a condition requiring details of bat and bird boxes and any external lighting to be installed. Details of drainage systems are required to ensure satisfactory drainage and water management can be achieved for the site.

Conclusion

22. For the above reasons I conclude that the appeal should be allowed.

A Denby

INSPECTOR

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) Demolition or construction works shall take place only between 0800 and 1800 hours on Mondays to Fridays and 0800 to 1300 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 5) Before development commences a scheme of intrusive site investigation shall be undertaken to assess the ground conditions and the potential risks posed to the development by past shallow coal mining activity. A report of the findings arising from this intrusive site investigation, including the results of any gas monitoring, and a scheme of proposed remedial works and how these will be implemented shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.
- 6) Prior to the erection of any external lighting on the site, a lighting plan shall be submitted to and approved in writing by the Local planning Authority. The lighting plan shall demonstrate that the proposed lighting will not impact upon ecological networks and/or sensitive features, e.g. bat and bird boxes. The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust's Bats and artificial lighting in the UK guidance. The development shall

thereafter be carried out and maintained in accordance with the approved details.

- 7) Development shall not commence until drainage works for foul and surface water drainage have been carried out in accordance with details which shall have been submitted to and approved in writing by the local planning authority.
- 8) Details of the makes, models and locations of bat and bird boxes shall be submitted to and approved in writing by the local planning authority. The boxes shall be sited in suitable locations, with a clear flight path and where they will be unaffected by artificial lighting and shall include:
 - A minimum of 1 external woodcrete bat box or integrated bat brick, suitable for nursery or summer roosting for small crevice dwelling bat species.
 - A minimum of 1 artificial nest, of either integrated brick design or external box design, suitable for starlings (42mm hole, starling specific), sparrows (32mm hole, terrace design), swifts (swift bricks or boxes) and/or house martins (house martin nesting cups).

Prior to the first occupation of the dwelling the boxes shall be erected in accordance with the approved details and thereafter retained and maintained in accordance with the approved details.

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