

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

Date: Monday, 28 February 2022

Committee:
Southern Planning Committee

Date: Tuesday, 8 March 2022

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

There will be some access to the meeting room for members of the press and public. If you wish to attend the meeting please e-mail democracy@shropshire.gov.uk to check that a seat will be available for you.

The meeting can be viewed live via Microsoft Teams using the link below. The recording will be made available on you tube, this will be made accessible from the web page for the meeting shortly afterwards.

www.shropshire.gov.uk/SouthernPlanningCommittee8Mar2022

The Council's procedure for holding Socially Distanced Planning Committees including the arrangements for public speaking can be found by clicking on this link:

<https://shropshire.gov.uk/planning/applications/planning-committees>

Tim Collard
Interim Assistant Director – Legal and Democratic Services

Members of the Committee

David Evans (Chairman)
Robert Tindall (Vice Chairman)
Caroline Bagnall
Andy Boddington
Nigel Hartin
Nick Hignett
Hilary Luff
Nigel Lumby
Richard Marshall
Tony Parsons

Substitute Members of the Committee

Julia Buckley
Richard Huffer
Kevin Pardy
Dave Tremellen
Claire Wild

Your Committee Officer is:

Tim Ward / Ashley Kendrick Committee Officer

Tel: 01743 257713 / 01743 250893

Email: tim.ward@shropshire.gov.uk / ashley.kendrick@shropshire.gov.uk

AGENDA

1 Apologies for Absence

To receive any apologies for absence.

2 Minutes

To confirm the minutes of the Southern Planning Committee meeting held on 8 February 2022 **(TO FOLLOW)**

Contact Tim Ward (01743) 257713.

3 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 Wednesday 2 March 2022

4 Disclosable Pecuniary Interests

Members are reminded that they must declare their disclosable pecuniary interests and other registrable or non-registrable interests in any matter being considered at the meeting as set out in Appendix B of the Members' Code of Conduct and consider if they should leave the room prior to the item being considered. Further advice can be sought from the Monitoring Officer in advance of the meeting.

5 **1 Crown Barn Hopton Wafers Cleobury Mortimer Shropshire DY14 0HA (20/04929/FUL)** (Pages 1 - 8)

Application under Section 73A of the Town and Country Planning Act 1990 for the retrospective erection of 3.3m high boundary fence

6 **Proposed Residential Development Land North of Bache Arms off Coronation Street Highley Shropshire (21/04561/FUL)** (Pages 9 - 22)

Erection of 2no detached dwellings

7 **Schedule of Appeals and Appeal Decisions** (Pages 23 - 48)

8 **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 5 April 2022.

This page is intentionally left blank

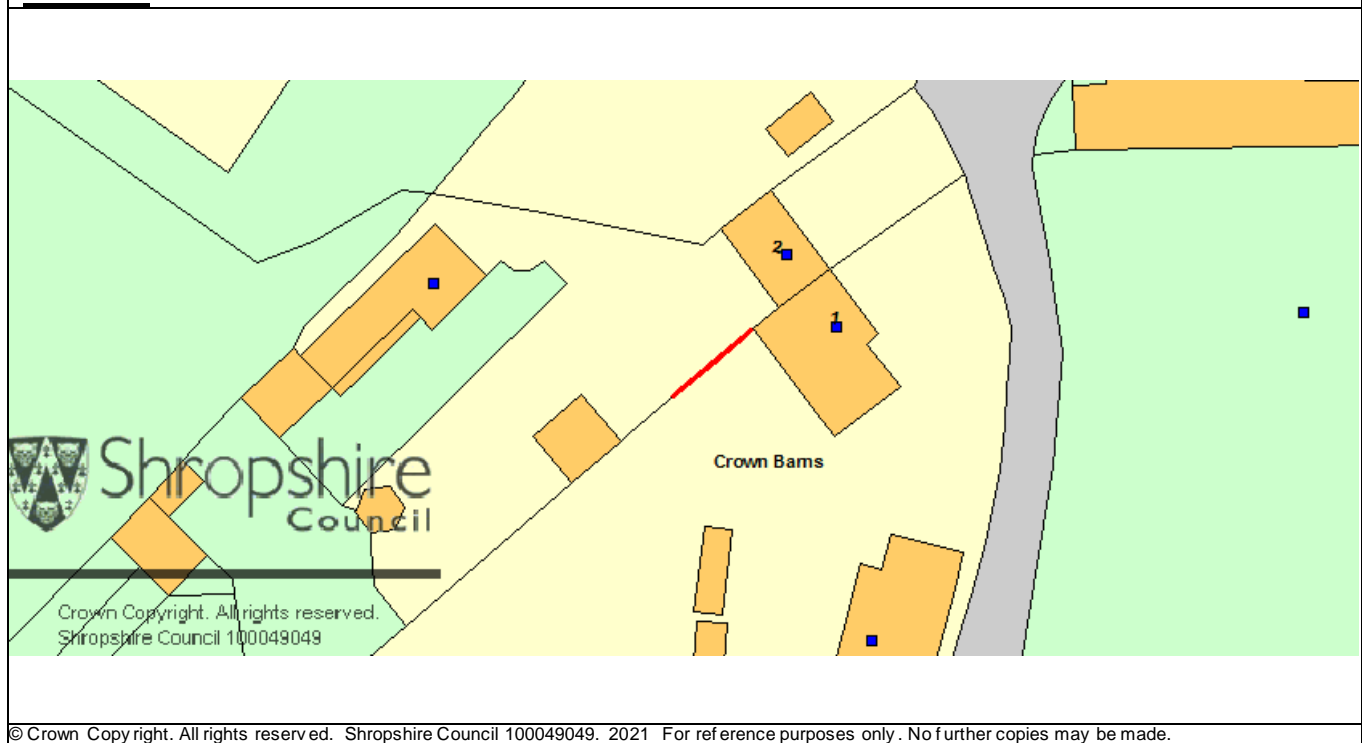
Development Management Report

Responsible Officer: Tracy Darke, Assistant Director of Economy & Place

Summary of Application

Application Number: 20/04929/FUL	Parish:	Hopton Wafers
Proposal: Application under Section 73A of the Town and Country Planning Act 1990 for the retrospective erection of 3.3m high boundary fence		
Site Address: 1 Crown Barn Hopton Wafers Cleobury Mortimer Shropshire DY14 0HA		
Applicant: Mr And Mrs N Turner		
Case Officer: Jacob Collett	email	: jacob.collett@shropshire.gov.uk

Grid Ref: 363760 - 276192



© Crown Copyright. All rights reserved. Shropshire Council 100049049. 2021 For reference purposes only. No further copies may be made.

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

Recommended Reason for refusal

1. The proposed extension of the fence would cause undue harm to the neighbouring amenity through significant overshadowing and loss of light, especially given the land topography and compass orientation of the site. This is contrary to policies MD2,CS6 and the NPPF.

REPORT

1.0 THE PROPOSAL

- 1.1 The application proposes the retrospective erection of a 3.3 high metre fence on the boundary of the property adjacent to the neighbouring dwelling.
- 1.2 Planning history at the site outlines no recent planning history but one planning enforcement case under 20/07092/ENF related to this fence. This application was considered closed when this application was submitted with the potential for reopening if refused.
- 1.3 The applicant has submitted extensive justification for the need of the proposed fence at the height submitted. This is based around personal issues which cannot be publicly disclosed without the applicant's approval. However, planning law does not take into consideration personal circumstances where all planning decisions must only consider material considerations and relevant national and local policy. As such whilst the applicants situation is fully sympathised with it does not represent a material planning consideration that should inform the outcome.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 1 Crown Barn is a semi-detached barn conversion dwelling located within open countryside and the settlement of Hopton Wafers. The dwelling is located on a northwest to southeast angle with the principal elevation facing northeast. To the rear of the dwelling is a garden. The dwelling is adjacent to 2 Crown Barn to the north east elevation, which shares a boundary angled on a southwest to northeast direction. The majority of the garden boundary is an established hedge with the part closest to the dwellings being a fence. The dwellings topography means the rear parts of the gardens are on significantly higher ground with it sloping fairly steeply to the rear elevations of the dwellings. It is also noted that the rear elevation of 1 Crown Barn is more rearwardly located than the adjacent 2 crown barns due to a single storey extension which does have some limited neighbour amenity impact. On a wider scale the remaining boundaries of the dwelling are not adjacent to domestic curtilage but road access and business premises.

3.0 REASON FOR COMMITTEE/DELEGATED DETERMINATION OF APPLICATION

3.1 In accordance with the 'Scheme of Delegation' this application has been concluded at the Agenda Setting Meeting on 17th February 2022 to be determined by planning committee due to councillor and parish council support.

4.0 Community Representations
A Site notice was displayed at the Site.
- Consultee Comments

Hopton Wafers Parish Council
Support

- Public Comments

One public representation was received;

Mrs Julie Thatcher - Neutral

Our view on the application of a high boundary fence

-3.3 is too high

-2.9 is acceptable

-As it is making our bedroom and lounge very dark as now have to put lights on all the time we would like to have some day light

-No thought into characteristics to properties

-Cat slide roof not in fitting with appropriate fence needs to be of similar colour and design

-Following existing line being angled and tiered

-This is not an extension to the existing fence it is a completely separate/addition fence that has already been erected

5.0 THE MAIN ISSUES

Principle of development

Siting Scale and Design

Neighbour Amenity

Other Issues

6.0 OFFICER APPRAISAL

6.1 Principle of Development

6.1.1 The principle of a fence at the boundary of a property is in principle an acceptable development subject to appropriate design and height. It is also important to note that a two metre high fence would be permissible at this location under permitted development regulations Schedule 2 Part 2 Class A Minor Operations without planning permission.

6.2 Siting, Scale and Design

6.2.1 Prior to the 'extension' of the fence there was an existing fence at this location. On review of the design of the extension to the fence, whilst not a very attractive

design is not poor in its appearance where it is very standard but also innkeeping through its simplicity. The siting is also appropriate given it being the designated boundary treatment and on top of an existing fence. There is however concern that the height of the proposed fence is inappropriate, not in its dominance or appearance but its impact on the neighbouring amenity.

6.3 Neighbour Amenity

6.3.1 The largest issue and only issue in regard to this proposal is its height. Given the elevation profiles of the rear garden meaning the land is lower at the rear elevations of the dwelling and the proposed fence being to the southeast elevation of the adjacent dwelling serious consideration has to be given to the neighbour amenity mainly in terms of overshadowing and loss of light. After a site visit and consideration of the 3.3 metre height and other influencing factors it is considered that the extension of the fence to the proposed height would cause harm to the neighbouring dwelling in terms of overshadowing. This is exacerbated by the land topography and location of the fence blocking light from the south. It was considered that a reduction in the fence height would be supported to reduce this harm to minimal levels, however this was not considered acceptable to the applicant. As a result, the overshadowing caused by the fence at 3.3 metres is considered unduly harmful to the neighbour amenity and represents unacceptable development.

6.4 Other Matters

6.4.1 Full consideration has been given as to whether temporary permission could be applied to the fence as suggested by the applicant, however temporary permission should only be applied where the development is considered acceptable in its own right, not as a reason to justify unacceptable development. As such approving the application as a temporary permission would be inappropriate.

7.0 CONCLUSION

It is overall considered that the extended fence at this location causes unacceptable harm to the adjacent dwellings amenity, mainly through restriction of light and overshadowing. This issue is made significantly worse by the land topography and compass orientation of the site which only worsens the impact of a 3.3-metre-high fence. Suggestions by the applicant in regard to temporary permissions are not appropriate solutions. As such the application is recommended for refusal on these grounds.

8.0 Risk Assessment and Opportunities Appraisal

8.1 Risk Management

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

- As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.

- The decision may be challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.

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

8.2 Human Rights

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

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

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

8.3 Equalities

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

9.0 Financial Implications

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

10. Background

Relevant Planning Policies

Central Government Guidance:

West Midlands Regional Spatial Strategy Policies:

Core Strategy and Saved Policies:

RELEVANT PLANNING HISTORY:

20/04929/FUL Application under Section 73A of the Town and Country Planning Act 1990 for the retrospective erection of 3.3m high boundary fence PDE
SS/1979/692/O/ Conversion of existing barn into a dwellinghouse. REFUSE 8th February 1980
SS/1/01/11842/F Conversion of barns to 2 x dwellings and alteration to vehicular access.
PERCON 9th March 2001
SS/1/00/11600/F Conversion of barn to 2no. dwellings & alteration to (existing) vehicular access.
WDN 23rd October 2000
SS/1/06/18095/F Erection of workshop; garage; stables & barn; new vehicular access & change of use of land from agricultural to domestic curtilage PERCON 25th May 2006
SS/1/99/010041/F Conversion of barn to 2 No. residential units.
REFUSE 21st October 1999
SS/1/06/18999/F Erection of extension to dwelling PERCON 16th January 2007
PREAPP/10/01136 Extension to barn PRRQD 6th May 2010
10/01955/FUL Erection of a two storey side extension to dwelling GRANT 2nd July 2010
20/04929/FUL Application under Section 73A of the Town and Country Planning Act 1990 for the retrospective erection of 3.3m high boundary fence PDE
SS/1979/692/O/ Conversion of existing barn into a dwellinghouse. REFUSE 8th February 1980
SS/1/01/11842/F Conversion of barns to 2 x dwellings and alteration to vehicular access.
PERCON 9th March 2001
SS/1/06/18095/F Erection of workshop; garage; stables & barn; new vehicular access & change of use of land from agricultural to domestic curtilage PERCON 25th May 2006
SS/1/99/010041/F Conversion of barn to 2 No. residential units.
REFUSE 21st October 1999
SS/1/06/18999/F Erection of extension to dwelling PERCON 16th January 2007

11. Additional Information

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

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 Ed Potter

Local Member

Cllr Gwilym Butler

Cllr Simon Harris

Appendices

APPENDIX 1 - Informatives

APPENDIX 1

Informatives

1. Despite the Council wanting to work with the applicant in a positive and proactive manner as required in the National Planning Policy Framework paragraph 38, the proposed development is contrary to adopted policies as set out in the officer report, where applicable, and referred to in the reasons for refusal, and it has not been possible to reach an agreed solution.

-

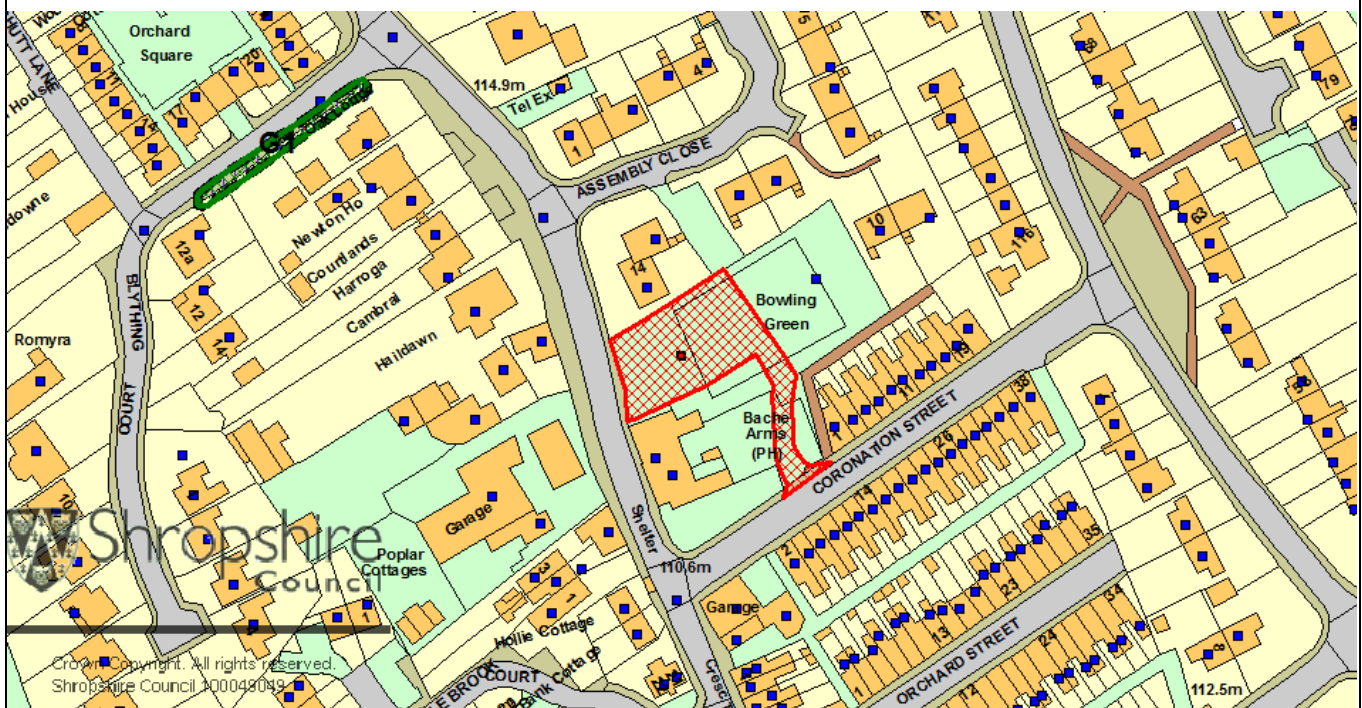
Development Management Report

Responsible Officer: Tracy Darke, Assistant Director of Economy & Place

Summary of Application

Application Number: 21/04561/FUL	Parish:	Highley
Proposal: Erection of 2no detached dwellings		
Site Address: Proposed Residential Development Land North Of Bache Arms Off Coronation Street Highley Shropshire		
Applicant: Simmonds		
Case Officer: Sara Jones	email	: sara.jones@shropshire.gov.uk

Grid Ref: 374088 - 283641



© Crown Copyright. All rights reserved. Shropshire Council 100049049. 2021 For reference purposes only. No further copies may be made.

Recommendation:- Refuse.

Recommended Reason for refusal

1. The loss of the Bache Arms PH garden would result in erosion of this existing community facility, with no equivalent or improved provision secured and it has not been demonstrated sufficiently that this loss would not undermine the viability of the Bache Arms PH. As such the proposal would conflict with the requirements of Policy CS6 and CS8 of the Core Strategy and paragraph 84 of the NPPF with regards to the retention of community facilities as part of a prosperous rural economy, as PH's in rural areas.

2. Whilst it is acknowledged that the development would be constructed under modern construction regulations, insufficient information has been submitted with this application to demonstrate that the proposed dwellings in such proximity to the Bache Arms PH would provide acceptable accommodation and that the development be appropriate for its location. Furthermore, neither has it been demonstrated that the development would not lead to noise complaints which may in turn place unreasonable restrictions on the established PH business which may harm the viability of the PH. As such the proposal would be contrary to the requirements of Policy CS6, and para.185 and 187 of the NPPF.

REPORT

1.0 THE PROPOSAL

1.1 This application seeks planning permission for the erection of two detached four bedroomed two storey dwellings on land which is currently used as a beer garden associated with the adjoining Bache Arms Public House. The dwellings have been designed to have a traditional appearance including decorative motifs on the front gable and traditional fenestration and materials. They would also have a similar design to the terraced dwellings which are currently under construction on the adjacent site (approved under application 20/02493/FUL).

1.2 The dwellings have been positioned opposite the terraced dwellings mentioned above and would face into the new cul-de-sac currently under construction off Coronation Street. Access to the public highway would therefore be via the shared driveway approved under planning permission 20/02493/FUL.

2.0 SITE LOCATION/DESCRIPTION

2.1 The application site is located within the village of Highley, a hub settlement approximately 10 kilometres to the south of Bridgnorth. The site lies within the conservation area and The Bache Arms public house building to the south. The roadside boundary with the B4555 is delineated by an established hedgerow to the east and likewise the boundary with the neighbouring established residential development of semi-detached bungalows, is delineated to the north by a hedgerow. The site to the west is adjoined by a new residential development

which is currently under construction (20/02493/FUL refers). The existing established residential development to the south takes the form of traditional long narrow fronted terraced dwellings (Coronation Street).

- 2.2 The site is relatively flat, stepping up from the Bache Arms building to the *** and is currently used as the public house garden and contains a number of benches which are utilised by patrons of the PH. The perimeter of the pub garden is delineated by a mature hedgerow

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 The Parish Council view and Local Ward Members view is contrary to the officer recommendation. The application was reported to the 17th February 2022 Agenda Setting Meeting taken by the Chair and Vice Chair of the Planning Committee where it was determined that: the application raised issues which warrant determination by the Planning Committee.

4.0 Community Representations

Consultee Comment

- 4.1 **Highley Parish Council** – No objections.
- 4.2 **SC Conservation** – No objections, recommend conditions.

Comments:-

It is noted that this proposal follows that of 20/02493/FUL that was granted planning permission. This proposal has been subject to some pre-application discussion as part of the ongoing development of the 2020 scheme in order to create a courtyard mews. This unfortunately would mean that the new dwellings would effectively back onto the principal High Street. However, having considered and consulted the proposed 3D visuals, there shall be a hedgerow that should provide a good degree of screening to that of the rear elevations, where overall it is considered that this would not be overly visually detrimental to both the character and appearance of the conservation area, along with the non-designated heritage asset adjacent, where the buildings should be read as being recessive, being set back within the existing plot.

There is no principle objection to the proposed traditional design of the two dwellings that reflect the architectural language of the 2020 scheme, where it is recommended that conditions are attached with regards to appropriate materials and finishes etc.

- 4.3 **SC Highways** - No Objection – subject to the development being constructed in accordance with the submitted details, accompanying this planning application, and the recommended highway related informatives.

- 4.4 **SC Ecology** – Follow standing advice.
- 4.5 **SC Trees** – No objection, recommend conditions.
- 4.6 **SC Regulatory Services** - Given the very close proximity of the proposed dwellings to a public house which is licensed for the sale of alcohol and the performance of live and amplified music until 1am I have concerns with respect to noise impact upon future residents from activities at the public house, and a possible conflict of use. Recommend that suitable weight is given to these matters in making a decision on the application.
- 4.7 **SC Affordable Housing** – No objection. The proposed development falls below the threshold by which the Local Planning Authority are able to require a contribution towards affordable housing.
- 4.8 **Coal Authority** – The application site does not fall within the defined Development High Risk Area and is located instead within the defined Development Low Risk Area. This means that there is no requirement under the risk-based approach that has been agreed with the LPA for a Coal Mining Risk Assessment to be submitted or for The Coal Authority to be consulted
- 4.9 **Sport England** – The proposed development does not fall within either our statutory remit or non-statutory remit therefore Sport England has not provided a detailed response in this case – recommends guidance.
- 4.10 **Public Comments**
Advertised and Site Notice displayed. No representations received.

5.0 THE MAIN ISSUES

Principle of development
Loss of the “Beer Garden”/Viability of the Public House
Residential Amenity
Character/Visual Amenity/Historic Environment
Highway Safety
Natural Environment
Drainage

6.0 OFFICER APPRAISAL

- 6.1 Principle of development
- 6.1.1 The National Planning Policy Framework (NPPF) sets out a presumption in favour of sustainable development, and notes that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. The NPPF constitutes guidance for local planning authorities as a material consideration to be given significant weight in determining applications.

- 6.1.2 The development plan comprises of the Shropshire Local Development Framework Adopted Core Strategy 2011(Core Strategy) and the Site allocation and Management of Development Plan (SAMDev) adopted 2015.
- 6.1.3 A key objective of both national and local planning policies is to concentrate new residential development in ‘sustainable’ locations which are easily accessible and which offer a range of services and community facilities.
- 6.1.4 Core Strategy Policies CS1, CS3, CS4, and CS11 seek to locate new housing on sites within and adjoining market towns, ‘key centres’ and other settlements (‘Community Hubs and Clusters’) as identified in the Site Allocations and Management of Development (SAMDev) plan. Highley is identified as a key centre and is seen as the focus for the development of services and facilities for the wider hinterland with balanced housing and employment growth. The application site is within the settlements development boundary as identified in Policy S9 of the SAMDev and thus is acceptable in principle.
- 6.2 Loss of the “Beer Garden”/Viability of the Public House
- 6.2.1 The site is currently used as outside space in connection with the Bache Arms Public House (PH). The proposal therefore falls to be assessed against, amongst other things, Policy CS8 of the Shropshire Local Development Framework Core Strategy (adopted 2011) (CS). This seeks, amongst other things, to protect and enhance existing facilities, services and amenities that contribute to the quality of life of residents and visitors. Policy CS6 of the CS is also relevant and stipulates, amongst other things, that the loss of existing facilities will be resisted unless provision is made for equivalent or improved provision or it can be clearly demonstrated that the existing facility is not viable over the long term.
- 6.2.2 During the course of the application the Officer raised concerns that, in the light of the fact that outdoor spaces have been a key benefit to hospitality businesses during the Covid pandemic, the loss of the outside space associated with the PH would impact adversely on the viability of the PH. The applicant was requested to advise why the PH garden was no longer needed to support the business. In response to this concern the applicant advised that the land subject of this application was sold off to ensure its short-term viability and is no longer in the ownership of the PH, and as such should not be used by the Bache Arms moving forwards. Whilst the land ownership may have changed its authorised used, in planning terms, is as amenity space associated with the PH. The proposed development would erode the facilities at the PH site through the permanent loss of the ability to use outdoor space and as such would not offer improved provision at the PH as an existing community facility. The loss of the outside space would reduce the options to operate the community facility and no viability evidence has been provided with this application which would demonstrate that this erosion of facilities would not harm the viability of the PH as a community facility.
- 6.2.3 It is acknowledged that there are two other PH’s in the area, The Ship Inn which

is located outside of Highley, close to the Highley Severn Valley Railway Station, some 1.50 km from the centre of the settlement and the Malt Shovel PH which is located on the edge of the settlement some 1.42 km to the north. The Bache Arms PH is the only PH within the High Street settlement centre.

- 6.2.4 The loss of the PH garden would result in erosion of this existing community facility, with no equivalent or improved provision secured and it has not been demonstrated sufficiently that this loss would not undermine the viability of the PH. As such the proposal would conflict with the requirements of Policy CS6 and CS8 of the Core Strategy. The proposal would also be contrary to the NPPF with regards to the retention of community facilities as part of a prosperous rural economy, as PH's in rural areas.
- 6.3 Residential Amenity
- 6.3.1 CS6 of the Core Strategy and Policy MD2 of the SAMDev Plan indicate that the development should not unacceptably impact on the amenity rightfully expected to be enjoyed by occupiers of neighbouring properties. The Councils policies also require new development to provide acceptable living standards for the occupants of dwellings, in terms of the internal size of living accommodation and the provision of external private amenity space. Developments must not provide cramped accommodation and minimal outside amenity space. It is also important to ensure such developments do not have unacceptable consequences for neighbours, such as overshadowing or loss of privacy.
- 6.3.2 The dwellings have been positioned to the rear of the plot fronting onto the cul-de-sac currently under construction and close to the side elevation of the PH building. As such it is considered that the development would not have an undue impact on the amenities enjoyed by the occupiers of the adjoining bungalows to the north.
- 6.3.3 Officers have assessed the information submitted and consider that the site is sufficient in size to provide adequate outdoor amenity space and parking provision for the size of accommodation proposed. However, concern has been raised by SC Regulatory Services respect to the very close proximity of the proposed dwellings to a public house which is licensed for the sale of alcohol and the performance of live and amplified music until 1am, with respect to noise impact upon future residents from activities at the public house, and a possible conflict of use. Accordingly, this was raised with the applicants who responded that the proposed dwellings would be constructed to modern living standards and as such would benefit from significant sound proofing and that the siting would ensure adequate amenity. In addition, the applicant states that this issue was not raised with respect to the previous planning application for residential development of the land currently under construction. With respect to the development currently under construction the dwellings are not positioned in such close proximity as proposed in this current application. Whilst it is acknowledged that the development would be constructed under modern construction regulations, insufficient information has been submitted at the time of writing this report to demonstrate that the proposed dwellings in such proximity to the PH

would provide acceptable accommodation and that the development be appropriate for its location. Furthermore, neither has it been demonstrated that the development would not lead to noise complaints which may in turn place unreasonable restrictions on the established PH business which may harm the viability of the PH. As such it is considered that the proposal would be contrary to para.185 and 187 of the NPPF

6.4 Character/Visual Amenity/Historic Environment

- 6.4.1 The National Planning Policy Framework (NPPF) at section 12 places an emphasis on achieving good design in development schemes. It cautions at paragraph 130 that planning policies and decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities). It adds that developments should be visually attractive as a result of good architecture, layout and appropriate and effective landscaping. Furthermore para. 134 states that *Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes.*
- 6.4.2 The themes of the NPPF are reflected in Shropshire Core Strategy policy CS6 which seeks to secure development that is appropriate in scale, density, pattern and design taking into account the local context and character. It also seeks to secure adaptable, safe and accessible developments. Policy CS17 requires that developments should not adversely affect the visual, ecological, geological, heritage or recreational values of Shropshire's natural, built and historic environment. SAMDev Plan policies MD2 relating to sustainable design and MD12 in respect of the natural environment give further guidance on meeting these objectives.
- 6.4.3 The themes of the NPPF are reflected in Shropshire Core Strategy policy CS6 seeks to secure development that is appropriate in scale, density, pattern and design taking into account the local context and character. It also seeks to secure adaptable, safe and accessible developments. Policy CS17 requires that developments should not adversely affect the visual, ecological, geological, heritage or recreational values of Shropshire's natural, built and historic environment. SAMDev Plan policies MD2 relating to sustainable design and MD12 in respect of the natural environment give further guidance on meeting these objectives.
- 6.4.4 Paragraph 189 of Part 16 'Conserving and enhancing the historic environment' of the NPPF recognises that heritage assets are an irreplaceable resource that should be conserved in a manner appropriate to their significance. In accordance with Paragraph 197, Local Planning Authorities should take into account:
- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
 - b) the positive contribution that conservation of heritage assets can make to

sustainable communities including their economic vitality; and
c) the desirability of new development making a positive contribution to local character and distinctiveness.

- 6.4.5 NPPF paragraph 194 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. The significance of a heritage asset can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.
- 6.4.6 In this case the applicant has submitted a Heritage Statement (HIA) which concludes that the development would not harm the significance of the Heritage Asset i.e. the Conservation Area.
- 6.4.7 The SC Conservation Officer has been consulted on the application and had dialog with the applicant prior to the application being submitted. The SC Conservation Officer identifies that the proposal affects a site that lies within the Highley Conservation Area and adjacent Bache Arms which is a non-designated heritage asset as defined under Annex 2 of the NPPF. According to the historic mapping Bache Inn was historically known New Inn, where they seemed to be a degree of separation between the rear curtilage of the public house and the Bowling Green, where this starts to be shown on the 1962 map.
- 6.4.8 It is noted that this proposal follows that of 20/02493/FUL that was granted planning permission and has been the subject to some pre-application discussion with the Conservation Officer as part of the ongoing development of the 2020 scheme in order to create a courtyard mews. This unfortunately means that the new dwellings would effectively back onto the principal High Street. It is considered however that the retention of the hedgerow that should provide a good degree of screening to that of the rear elevations, and overall the SC Conservation Officer advises that the proposed development would not be overly visually detrimental to both the character and appearance of the conservation area, along with the non-designated heritage asset adjacent, where the buildings would be read as being recessive, being set back within the existing plot.
- 6.4.9 Turning to the design of the dwellings. The traditional design of the proposed dwellings would reflect the architectural language of the adjacent development under construction and is considered acceptable in the context of the site.
- 6.5 Highway Safety
- 6.5.1 The NPPF, at section 9, seeks to promote sustainable transport. At paragraph 110 – 111 it states that decisions should take account of whether safe and suitable access to the site can be achieved for all people and 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.

- 6.5.2 Furthermore, Core Strategy policy CS6 requires all development to be safe and accessible to all and have appropriate parking. It seeks to achieve safe development and that the local road network and access to the site is capable of safely accommodating the type and scale of traffic likely to be generated.
- 6.5.3 Shropshire Council has not set local parking standards for residential and non-residential development. At paragraph 3.15 of the SAMDev Plan, which is part of the explanation to policy MD2 (Sustainable Design), it states that developments must be designed so as to not result in an unacceptable adverse impact on local infrastructure and gives as an example that adequate on-site parking should be incorporated within a development site to ensure that cars do not overspill onto surrounding roads and thereby negatively impact on the local road network and residential amenity.
- 6.5.3 The scheme proposes the utilisation of the access arrangements previously approved under application 20/02493/FUL, with the provision of two parking spaces per dwelling currently proposed and indicates that the remaining PH site could accommodate the provision of 11 parking spaces, however it is noted that this land lies outside the application site and is shown on the approved scheme currently under construction (20/02493/FUL) to include in part a small area of soft landscaping (see section 6.6 below). SC Highways team has been consulted on this application and raises no objection.
- 6.5.4 On balance, given the planning history, the scale of the development and its location within the settlement it is considered that adequate on-site parking is proposed.
- 6.6 Natural Environment
- 6.6.1 The development of this site does not raise any significant ecology issues. As such the application can, in relation to ecology considerations, be considered to be compliant with relevant development plan policy set out in Core Strategy Policy CS17, SAMDev Policy MD12 and Part 15 of the NPPF.
- 6.6.2 SAMDev policy MD2 acknowledges that effective landscape design is key to high quality sustainable development and focuses not only on how a development looks but also how it functions including its relationship to the wider area.
- 6.6.3 It is noted that the proposed development would lead to the loss of an area which was identified in the development currently under construction as an area of soft landscape, as this area is shown as becoming part of the car parking provision for the PH. The approved plans for under planning permission 20/02493/FUL show that this area of soft landscape was to be planted with a variety of shrubs and two trees (a *Malus hupehensis* and a *Prunus sargentii*). Should planning permission be granted it is recommended that the area of landscaping to be lost should be replaced within the current proposals, at least so far as the two trees to be planted are concerned. Ideally these trees should be planted in communal space rather than within private gardens. SC Tree Officer recommends that

should insufficient rooting volume be available in soft, open ground to sustain the planted trees to maturity, then special planting pit designs will be required, utilising subterranean soil cells or similar load bearing structure under a porous hard surface dressing .

6.6.4 The SC Tree Officer also supports the retention of the existing hedgerow (and by extension the trees contained within it) along the northern site boundary with neighbouring residential properties and recommends appropriate conditions, should planning permission be granted to ensure that the development, particularly the hammerhead turning area, parking spaces off it and the dwelling identified as Unit 1 does not cause damage to the roots and above ground parts of the hedge and trees.

6.7 Drainage

6.7.1 The application form states that proposed drainage to serve the development is via the mains sewer for foul drainage and via soakaway for the proposed surface water drainage. No details have been submitted with regards to drainage and the Council's Drainage Engineer has requested that a sustainable drainage scheme is designed and constructed for the disposal of surface water, in accordance with the Council's Surface Water Management: Interim Guidance for Developers document. This can be the subject of later approval via a suitable condition should planning permission be granted.

6.8 Other Issues

6.8.1 The Coal Authority have confirmed that the application site does not fall within the defined Development High Risk Area and is located instead within the defined Development Low Risk Area. This means that there is no requirement under the risk-based approach that has been agreed with the LPA for a Coal Mining Risk Assessment to be submitted. In accordance with the agreed approach to assessing coal mining risks as part of the development management process, The Coal Authority's Standing Advice is recommended to be attached to any grant of planning permission as an informative note to the applicant in the interests of public health and safety.

7.0 CONCLUSION

7.1 The proposed housing would provide some social and economic benefits. However, given the scale of the development the benefits and weight that can be afforded to these benefits in this case would be small.

7.2 The loss of the PH garden would result in erosion of this existing community facility, with no equivalent or improved provision secured and it has not been demonstrated sufficiently that this loss would not undermine the viability of the PH. As such the proposal would conflict with the requirements of Policy CS6 and CS8 of the Core Strategy and paragraph 84 of the NPPF with regards to the retention of community facilities as part of a prosperous rural economy, as PH's in rural areas.

- 7.3 Whilst it is acknowledged that the development would be constructed under modern construction regulations, insufficient information has been submitted with this application to demonstrate that the proposed dwellings in such proximity to the PH would provide acceptable accommodation and that the development be appropriate for its location. Furthermore, neither has it been demonstrated that the development would not lead to noise complaints which may in turn place unreasonable restrictions on the established PH business which may harm the viability of the PH. As such the proposal would be contrary to the requirements of Policy CS6, and para.185 and 187 of the NPPF.

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

Core Strategy and Site Allocations and Management of Development (SAMDev) Plan:

CS1 - Strategic Approach

CS3 - The Market Towns and Other Key Centres

CS6 - Sustainable Design and Development Principles

CS11 - Type and Affordability of housing

CS17 - Environmental Networks

CS18 - Sustainable Water Management

MD1 - Scale and Distribution of Development

MD2 - Sustainable Design

MD12 - Natural Environment

MD13 - Historic Environment

Settlement: S9 - Highley

SPD Type and Affordability of Housing

RELEVANT PLANNING HISTORY:

12/00853/OUT Application for outline approval (access, appearance, layout and scale not reserved) for the erection of 4 dwellings with associated parking; construction of access; construction of one-metre-high retaining wall and boundary treatments GRANT 18th June 2014

17/02688/REM Approval of reserved matters (landscaping for consideration) pursuant to 12/00853/OUT for the erection of four dwellings GRANT 10th August 2017

17/05453/VRW106 Variation of Section 106 for planning application number 17/02688/REM to reduce the level of affordable housing contribution NOOBJC 25th February 2019

20/02493/FUL Erection of four terraced properties; formation of car parking area and on-site driveway. Granted 28th October 2020.

22/00377/FUL Conversion of existing first-floor apartment and function rooms to form 3No. apartments. Pending consideration.

11. Additional Information

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

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 Ed Potter

Local Member

Cllr Dave Tremellen

Appendices

This page is intentionally left blank



Committee and date

Southern Planning Committee

8 March 2022

SCHEDULE OF APPEALS AS AT COMMITTEE 8 March 2022

LPA reference	20/04268/FUL
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr and Mrs Bound
Proposal	Erection of an eco self-build replacement dwelling for an agricultural worker and garage with septic tank, alterations to existing vehicular access and associated works
Location	Little Onny Horderley Craven Arms Shropshire SY7 8HT
Date of appeal	02.02.2022
Appeal method	Written Representations
Date site visit	
Date of appeal decision	
Costs awarded	
Appeal decision	
LPA reference	20/04700/VAR
Appeal against	Refusal
Committee or Del. Decision	Committee
Appellant	K H Developments
Proposal	Variation of Condition No.s 1 (approved plans) and 7 (landscaping) attached to planning permission 19/03888/VAR dated 28 January 2020 (As amended)
Location	Development Land West Of Springfield Park Clee Hill Shropshire
Date of appeal	04.02.2022
Appeal method	Written Representations
Date site visit	
Date of appeal decision	
Costs awarded	
Appeal decision	

LPA reference	20/01280/FUL
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr Frank Evans
Proposal	Change of use from horse paddock to rural holiday park comprising of 7No. static caravans, hardstanding; access road, alterations to existing access and car parking; installation of bio disc sewage treatment unit
Location	Proposed Holiday Park To The West Of Gilberries Lane Gretton Church Stretton Shropshire
Date of appeal	08.02.2022
Appeal method	Written Representations
Date site visit	
Date of appeal decision	
Costs awarded	
Appeal decision	

LPA reference	18/06333/ENF
Appeal against	Enforcement notice
Committee or Del. Decision	n/a
Appellant	Sonja Oakley
Breach	The material change of use of the land to a mixed use of agricultural and for storage associated with non-agricultural commercial use, namely storage of vehicles and materials in association with the carrying on of other businesses
Location	Land To The North Of Claverley Cricket Ground Claverley Shropshire WV5 7AE
Date of appeal	18.06.2021
Appeal method	Written representations
Date site visit	24.08.2021
Date of appeal decision	08.02.2022
Costs awarded	
Appeal decision	Allowed

LPA reference	18/01258/OUT
Appeal against	Refusal
Committee or Del. Decision	Committee
Appellant	Mr & Mrs JN & SA West
Proposal	Outline application for the erection of 5 No dwellings, to include means of access (re-submission and amended description)
Location	Proposed Residential Development Land South East Of Springbank Farm Shrewsbury Road Church Stretton Shropshire
Date of appeal	10.02.20..
Appeal method	Written Representations
Date site visit	
Date of appeal decision	
Costs awarded	
Appeal decision	

LPA reference	21/00490/FUL
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	S W Halls
Proposal	Erection of two storey rear extension; installation of roof mounted solar panels; lowering of parapet wall and erection of a glass ballustrade; replacement windows and re-rendering property
Location	Compasses Cottage Upper Linney Ludlow Shropshire SY8 1EF
Date of appeal	26.10.2021
Appeal method	Written Representations
Date site visit	
Date of appeal decision	10.02.2022
Costs awarded	
Appeal decision	Dismissed

LPA reference	20/02971/FUL
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Shropshire Homes Ltd
Proposal	Erection of 6No. dwellings, associated parking and formation of vehicular access (Amended)
Location	Proposed Residential Development Land To The West Of Castle View Terrace Ludlow Shropshire
Date of appeal	19.10.2021
Appeal method	Written representations
Date site visit	17.01.2022
Date of appeal decision	11.02.2022
Costs awarded	
Appeal decision	Dismissed

LPA reference	21/00305/PMBPA
Appeal against	Planning Permission Required
Committee or Del. Decision	Delegated
Appellant	Mr Richard Cooke
Proposal	Conversion of agricultural building into dwelling (prior notification under Schedule 2, Part 3, Class Q of Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended))
Location	Proposed Conversion Of Agricultural Building NW Of, Hardwick, Shropshire,
Date of appeal	06.12.2021
Appeal method	Written Representation
Date site visit	
Date of appeal decision	24.02.2022
Costs awarded	
Appeal decision	Dismissed



Appeal Decision

Site visit made on 24 August 2021

by Thomas Shields MA DipURP MRTPI

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

Decision date: 08 February 2022

Appeal Ref: APP/L3245/C/21/3273259

Land to the north of Claverley Cricket Ground, Claverley, Wolverhampton, Shropshire, WV5 7AE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter "the Act").
- The appeal is made by Mrs Sonja Oakley against an enforcement notice issued by the Shropshire Council.
- The enforcement notice was issued on 16 March 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to a mixed use of agricultural and for storage associated with non-agricultural commercial use, namely storage of vehicles and materials in association with the carrying on of other businesses.
- The requirements of the notice are:
 - (i) Cease the use of the land (as edged red on the plan) for a mixed use of agriculture and for storage associated with non-agricultural commercial use.
 - (ii) Remove from the land any materials associated with compliance of (i) and return the land to its previous state.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) (c), (f) and (g) of the Act.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Appeal site

1. The appeal site is identified by the red outline marked on the plan attached to the enforcement notice. It forms part of the appellant's wider land holding, indicated by a blue outline marked on the notice plan, and is located within the open countryside and the Green Belt to the southwest of the village of Claverley. Vehicular access is via a tall gated access from the adjoining lane.

Preliminary matters

2. The Council served two enforcement notices on 16 March 2021. The first notice was in respect of operational development on the site comprising the erection of buildings, a wall, gates and other structures, creation of hardstanding and the siting of a shipping container. All of these are required to be removed and the land restored to its former condition within 6 months (19 October 2021). No appeal was lodged against the notice and the notice is in effect.
3. The second notice is the one subject of this appeal and relates to an alleged material change of use of the land to a mixed use of agriculture and storage as summarised in the banner heading above.

4. The appellant suggests that the use of the land, and the operational development that has taken place (subject of the first notice), cannot be considered as separate matters; that they are part and parcel of the same activity.
5. However, the notice subject of this appeal alleges only a material change of use, being a mixed use of agriculture and storage of vehicles and materials in association with the carrying on of other businesses. In this regard it should be noted that an appeal on ground (a) of s174(2) of the Act is that planning permission ought to be granted for any breach of planning control which may be constituted by "the matters stated in the notice". Consequently, in this case the appeal on ground (a)/deemed application for planning permission can only seek planning permission for the mixed use of the land as alleged (noting that use of land solely for agriculture would not require planning permission).
6. The operational development subject of the first notice, taken as a whole, is substantial development and requires planning permission in its own right. It is not open to me to grant planning permission for it in this appeal.
7. The Inspectorate notified the Council of the ground (b) appeal being made on 28 June 2021. The appellant's subsequent statement and evidence, including ground (b), was copied to them on 10 August 2021. However, the Council have not directly addressed the ground (b) appeal in their SOC. Nonetheless, I have taken account of their evidence as a whole in reaching my decision.

Validity of the enforcement notice

8. It is argued for the appellant that the alleged breach is unclear, rendering the notice a nullity or invalid and incapable of correction. This stems from an assertion that the breach fails to identify the specific non-agricultural uses alleged to have taken place, and the particular structures or buildings alleged to be in such unauthorised use. I disagree with this assertion.
9. Firstly; the breach goes beyond simply stating "non-agricultural" use. It clearly alleges a mixed use for agriculture and for (non-agricultural) storage of vehicles and materials. "Storage" is an industrial type of use in its own right and is distinct from, for example, the storage of equipment, vehicles and materials as part of or ancillary to a purely agricultural use of land. While the alleged breach might have been expressed differently, it nonetheless adequately specifies the breach of planning control alleged to have taken place.
10. Secondly; while I agree the notice does not identify particular buildings or structures in use for non-agricultural storage, that is entirely consistent with the allegation. It clearly identifies the whole of the appeal site (outlined in red on the notice plan) as being used for a single *mixed* agricultural and storage use.
11. To conclude, the allegation in the notice is clearly expressed and capable of being understood on a plain reading. Hence, the notice is neither a nullity nor invalid.

The appeal on ground (b)

12. An appeal on ground (b) is a claim that the matters stated in the notice which may give rise to the breach of planning control have not occurred as a matter of fact. Note that "occurred" is past tense. Thus, for this ground of appeal to

succeed it must be shown that prior to the issue of the notice on 16 March 2021 the alleged mixed use of the land for agriculture and storage had not occurred.

13. In this legal ground of appeal the burden of proof rests with the appellant, and the test of the evidence is on the balance of probabilities (whether something is more likely than not). Additionally, the Courts¹ have established that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make an appellant's version of events less than probable, there is no good reason to dismiss an appeal, provided the appellant's evidence is sufficiently precise and unambiguous.

Summary of the appellant's evidence

14. The appellant's evidence is set out in the submitted statement of case (SOC) together with appendices, and final comments.
15. Appendix EP4 is the appellant's Statutory Declaration (SD) dated 4 August 2021. It relates to use of the wider site (shown in blue on the notice plan) as well as the appeal site. In summary it states the following: that from July 2017 when she acquired the land it has been used only for the keeping of chickens, goats and bees. She works full time on the land with part-time assistance from her husband and two sons. At the date of the SD the livestock then present was a herd of pedigree goats and rare breed poultry. An orchard has been established, bee hives have been installed for future production of honey and rare breed pigs are to be added. The intention to establish a farm enterprise focussing on high quality specialist produce. The livestock will provide milk and meat for sale and a breeding programme will be established. She also owns other parcels of land nearby used for bringing male goats (wethers) up to weight, and for production of haylage.
16. With regard to the buildings on site she states they are used for storage of grain, hay, equipment and machinery, also for providing stalls for birthing/breeding, shelter and facilities for milking and herd maintenance. The storage container on site is used for secure storage for produce from the holding and materials needed, such as jars and packaging, and freezers and refrigerated units.
17. She goes on to state that the family own and operate a separate contracting and property maintenance business and this is completely separate from the farming business and does not and has never operated from the appeal site. All the machinery at the appeal site is utilised for agricultural purposes. With regard to specific items she states that the 'loadall' machine is used for general work and transport purposes as the mini tractor at the site cannot be used on the road, thereby needing to be transported by trailer between landholdings.
18. She concludes (I summarise) by stating that everything on site relates to the use of the land for agriculture, including the yard area and drainage works that were undertaken.
19. Appendix EP5 is a SD from Gavin Oakley also dated 4 August 2021. In brief, it corroborates all the evidence in the appellant's SD in respect of the appeal site being used only for agriculture. He adds that all equipment and machinery

¹ *Gabbittas v SSE & Newham BC* [1985] JPL 630

- associated with the separate maintenance business are stored at separate premises.
20. Consistent with the two SDs referred to previously the appellant's SOC and submitted final comments also sets out that all vehicles, machinery, and equipment stored on site are associated solely with the agricultural use of the land, and that the separate property maintenance company operates independently and at a separate location from the appeal site.
 21. Reference is made in the SOC to a business plan for the agricultural enterprise. However, the references to future ambition and use of the land are not relevant to this ground of appeal which relates solely to whether the matters alleged in the notice occurred prior to the issue of the notice.
 22. Appendices EP8, EP9 and EP10 are unsigned and undated correspondence from three individuals. Other than these people acknowledging their acquaintance with the appellant and her husband, they do not provide any evidence of the land use at the appeal site prior to the issue of the notice. I attach no weight to them.
 23. Appendix EP11 is a copy of a planning contravention notice (PCN) and completed questionnaire in relation to the wider site, served on the appellant and her husband by the Council in June 2020. Question 4(i) asks about current agricultural activity on the land. The response states: "The site is being prepared so that it is suitable for keeping goats as part of a new business venture. Once planning matters are resolved S&G Oakley Farm intend to acquire 10 goats, with a view of increasing numbers over the next few years. The goats will be kept for small scale milk and meat production. The partners have a CPH number (35/196/0344) and have registered with Animal Health and obtained a unique herd number".
 24. The response to question 4(j) in respect of proposed future agricultural activities indicates the intention to keep bees and hens. It goes on in response to question 4(k) to describe how the goats would be kept during the seasons, and the intention (question 4(l)) to increase numbers in future years. In answer to other questions items of machinery and equipment are listed and said to be used for land management, livestock care and transportation. I also note that it confirms a building was erected in September 2018 and "works to site" began in October 2019.
 25. Appendix EP14 is a signed letter from a veterinary practice confirming that they have attended goats at the appeal site since November 2020.

Analysis

26. While there may have been little if any 'active' agricultural use of the land immediately following the appellant's acquisition of it in 2017, there is no dispute by any party that the lawful use of the land is for agriculture, both prior to and since its acquisition by the appellant. The question to be determined for this ground of appeal is whether a new storage use was added, thereby resulting in a mixed use of agriculture and storage.
27. The evidence in the two SDs, sworn on Oath to be truthful, are unequivocal in stating that no non-agricultural storage use of materials and vehicles has taken place. It seems to me that a person would not lightly submit false evidence as they will be aware of the serious consequences of doing so, not least being the

penalties that could result from any subsequent prosecution and conviction for an offence of perjury. Moreover, the SDs are not directly contradicted by the Council or any other party. On their face therefore I attach significant weight to the SDs in reaching my decision.

28. Providing false information in response to a PCN can also result in serious consequences (as explained within the PCN). Accordingly, I also attach due weight to the completed PCN questionnaire.
29. Appendix 10 to the Council's SOC includes five photographs received by them from third parties. However, while the date on which the Council received them is indicated, the images themselves are undated by the person(s) who took them. I cannot therefore be sure when the images were taken and 3 of the marked dates are after the enforcement notice was issued. They do not provide convincing evidence of the land being used for non-agricultural related storage of vehicles and materials prior to the notice being issued. The 2 images that are marked as being received before the notice was issued clearly show the substantial operational development in progress at the time, but they do not indicate to me any sustained storage use of the land as alleged.
30. Appendix 1 to the Council's SOC is the officer report (OR) recommending enforcement action. It refers (para. 2.1) to complaints received regarding the appeal site, including in respect of the alleged unauthorised use subject of this appeal. However, copies of those complaints or Council records of any investigation relating to them have not been provided.
31. The OR goes on to summarise "general observations". These include use for "storage of materials and vehicles in connection with other businesses". However, no direct evidence of observing or otherwise confirming such use is provided. The Council point to a contradiction on the Komo Forestry website which states that their operations are close to Bridgnorth, their address is in Wolverhampton, but the location view on google maps via their website is the appeal site. This single factor is curious and is not expanded upon by either of the main parties. However, by itself I cannot rely on an unexplained link to google maps as weighty evidence that the alleged use occurred as a matter of fact.
32. The OR also refers to no livestock being observed. However, the lack of livestock does not mean the land was not in agricultural use, as it always had historically been so, whether actively farmed or not. Moreover, the letter from the veterinary practice referred to earlier (EP14) refers to attending animals on the site since November 2020 and the notice issued in 2021 alleges a mixed use including agriculture.
33. The OR (para. 2.2) lists 4 comments from third parties. They all refer to the operational development on the site but only the fourth one refers loosely to non-agricultural use. It states that a commercial business "appears to have been operating from this site".. and "we believe that an associated business is using the site to store heavy plant as this has been seen entering and leaving regularly". However, the observation is not inconsistent with the acknowledge groundwork remodelling and other building operations undertaken by the appellants over a lengthy period of time.
34. An officer visit to the site in connection with one of the planning applications was made on 9 September 2020. Any direct records of the observations made

at the time of the officer's visit are not before me. The OR (page 6) refers to the visit. It states that the officer "found vehicles that were not for agricultural use and storage of other materials" including "low loading vehicles stacked with wood and items of household furniture". The presence of household furniture seems at odds with the claimed agricultural use of the site. If the officer had questioned the appellant during the visit regarding the observation the response is unfortunately not before me. While I attach some limited weight to this part of the Council's evidence, a single observation on a single day does not convince me that there was a more substantive or prolonged use of the site for mixed agriculture and storage.

35. The Council's Appendices 2 and 4 are the ORs relating to planning applications for elements of operational development at the site. While they in small part refer to allegations of potential unauthorised use these documents provide no actual evidence of such use.
36. In response to this appeal being made a number of third party comments were received, including from the Parish Council, some with photographs of the site. However, taken together they almost entirely relate to the remodelling of the land, building and other operational development on the appeal site over the period of time before the notice was issued². In balancing all the evidence they do not add any significant weight either way with regard to the alleged material change of use of the site.
37. During my own visit to the appeal site I observed the items and vehicles then present, including within buildings. However, it should be noted that my visit and observations were after the date the notice was issued. The appellant's case relies on no mixed use of agriculture and storage having occurred before that date. Nonetheless, I did not see any use of the site, or any items or vehicles which, either by themselves or cumulatively, conflicted with the appellant's evidence relating to the use of the site.

Conclusion on ground (b)

38. As set out previously I must determine the appeal having regard to the evidence before me, tested on the balance of probabilities.
39. I attach significant weight to the Statutory Declarations from the appellant and her husband and to the completed PCN questionnaire for the reasons I have set out earlier. It is precise and unambiguous. Against that, there is very little direct evidence which clearly contradicts the appellant's case such that it would make it less than probable. Additionally, the reported observations from third parties in respect of site activity appear to relate to the operational development taking place over a prolonged period of time, rather than the alleged material change of use.
40. Having regard to all of the evidence before me I therefore find, on the balance of probabilities, that the use of the land to a mixed use of agricultural and for storage associated with non-agricultural commercial use, namely storage of vehicles and materials in association with the carrying on of other businesses, has not occurred as a matter of fact.

² All of which is required by the first enforcement notice to be removed and the land restored to its former condition.

41. For all the reasons given above, I conclude that the appeal should succeed on ground (b) and the enforcement notice will be quashed.
42. In these circumstances, the appeal on grounds (a), (c), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Formal Decision

43. The appeal is allowed and the enforcement notice is quashed.

Thomas Shields

INSPECTOR

This page is intentionally left blank



Appeal Decision

Site visit made on 17 January 2022

by **Gareth W Thomas BSc (Hons) MSc (Dist) DMS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 February 2022

Appeal Ref: APP/L3245/W/21/3273203

8 Upper Linney, LUDLOW, SY8 1EF

- 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 Dr Steven Halls against the decision of Shropshire Council.
- The application Ref 21/00490/FUL, dated 29 January 2021, was refused by notice dated 14 April 2021.
- The development proposed is for the:
 - a) Removal of internal staircase and restore previous ceiling/floor
 - b) Removal of the existing first-floor balcony and replacement with an enclosure on two levels of remaining unenclosed space to contain new staircase access to upper storey of house and the patio
 - c) Reduction in height of the brick parapet and replace with glass screens on the West & North elevations
 - d) Fitting of photo-voltaic solar panels to the West-facing roof
 - e) Removal of 'pebbledash' render throughout and replace with smooth render
 - f) Replacement of rotten windows at the East end with white composite double-glazed windows resembling existing in order to comply with Building Regulations covering emergency egress.

Decision

1. The appeal is dismissed

Main Issue

2. The main issues in this appeal are the effects of the proposed development firstly, on designated heritage assets and secondly, on the living conditions of occupiers of neighbouring properties in terms of overlooking.

Reasons

Designated heritage assets

3. The proposals would see the erection of a narrow two-storey pitched roof extension that would replace part of an unsightly first floor balcony and railings consisting of timber planks supported by metal supports. The appeal property itself is a relatively undistinguished two-storey dwelling of modest proportions located to the rear of The Compass PH, a Grade II Listed Building and which itself, having outbuildings and smoking shelters that gives the immediate area a ramshackle appearance.
4. Nevertheless, the appeal site is located within the highly prestigious Ludlow Conservation Area, which at this location is characterised by tight knit streets and buildings of Georgian and Victorian properties that are grouped alongside

and below the dominant Grade 1 listed St Laurence Church. The rough track leading from Upper Linney provides access to the property and runs past the town walls, a scheduled ancient monument and Grade II listed structure. Although part of the walls that also support the graveyard to St Lawrence Church has subsided and the graveyard fenced off as a temporary security measure, the roof to the appeal property along with other roofscapes continue to be highly visible and play an important part of the medieval townscape at this location.

5. St Laurence Church is the largest parish church in Shropshire with its 135 ft tower dominating the skyline of Ludlow and contributing to its significance as an imposing and grand structure that occupies an important setting above medieval streets and the remnants of the town walls. Its curtilage and graveyard provide a much valued publicly used open space.
6. From the lower level of Upper Linney, the property is viewed narrowly through the gap that forms the rough access track to the PH as part of backland development that is not untypical of a medieval town and layout. The significance of the Conservation Area is derived from the rich variety of styles, forms and materials of historic buildings many of which are condensed into distinct urban groupings, including the appeal premises and its relationship with other buildings of earlier vintage. The imposing edifice of St Laurence Church however dominates views at this location.
7. The proposed development despite replacing an impoverished designed structure, is of equally poor design comprising an over-elongated narrow gable extension with a pitifully shallow roof which would result in an incongruous development, that would appear as a wholly discordant feature when viewed from the important open space alongside the Grade I listed church. The glazed balustrade and solar panels mounted on the existing roof would also have a dominating and incongruous effect when viewed from the church grounds and would introduce alien features into the views of relatively unspoilt traditional buildings and the historic townscape from the church environs.
8. The appellant draws attention to other properties that have been altered by way of solar panel installations. However, I am not aware of the circumstances behind these or whether they required planning permission. In any event, I have to consider the merits or otherwise of what is proposed at the appeal site.
9. The proposed development would in my view fail to preserve or enhance the character or appearance of the Ludlow Conservation Area, which is what I am required to consider by law. Moreover, the National Planning Policy Framework (the Framework) defines the setting of a heritage asset in terms of the surroundings in which it is experienced. The appeal scheme would have a harmful effect on the setting of the listed church through the introduction of incongruous and alien features that would be readily visible from the church grounds and in views of the listed church from sections of Upper Linney.
10. I agree with the Council that a better-informed conservation-led scheme would be likely to provide at least the same amount of floorspace without detriment to the designated heritage assets noted above.
11. Whilst I have identified harm to designated heritage assets, in accordance with the Framework, this is at the less than substantial harm level, which requires that I also consider any public benefits that might arise and weigh these into

the heritage balance. I have not been provided with any evidence that public benefit would occur. Notwithstanding, I would accept that the solar panels would help to reduce carbon omissions. However, these would be of such modest public benefit overall and would not overcome the harms that I have identified.

12. Accordingly, I find that the proposed development would be contrary to Policies CS6 and CS17 of the Shropshire Local Development Framework Adopted Core Strategy, Policy MD13 of the Shropshire Council Site Allocations and Management of Development Plan. In combination, these policies reflect those in the Framework which require that new development be of high-quality design that take into account local character while maintaining, protecting and enhancing Shropshire's built and historic environment.

Living conditions of neighbouring occupiers

13. I was able to view the rear elevations and rear garden areas associated with properties fronting Corve Street but this was at a relatively acute angle and I had to lean over the parapet wall to do so. Although the lowering of the parapet wall at this point and its replacement by glazed screen panels might introduce some additional overlooking, given the vegetation that exists within adjoining gardens coupled with the opportunity that would be available to me to impose an appropriately worded condition that would ensure that the screens be installed with obscure glazing, this would be minimal and would not be detrimental to the living conditions of those occupiers.
14. Consequently, I find that the degree of overlooking would not substantially change as a result of the appeal scheme and therefore find no conflict with Policy CS6 of the Shropshire Local Development Framework Adopted Core Strategy, which amongst other things, sets out to protect the amenity of occupiers of neighbouring properties.

Conclusion

15. For the above reasons and taking account of all other matters raised, I conclude that this appeal be dismissed.

Gareth W Thomas

INSPECTOR

This page is intentionally left blank



Appeal Decision

Site visit made on 17 January 2022

by **Gareth W Thomas BSc(Hons) MSc(Dist) PgDip MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 February 2022

Appeal Ref: APP/L3245/W/21/3274886

Land West of Castle View Terrace, Ludlow, Shropshire, SY8 2NG

- 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 Shropshire Homes Ltd against the decision of Shropshire Council.
 - The application Ref 20/02971/FUL, dated 24 July 2020, was refused by notice dated 27 November 2020.
 - The development proposed is for the erection of 6 No. dwellings, associated parking and formation of vehicular access.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellants submitted a Landscape and Visual Impact Assessment (LVIA) after the Council had determined the application. The Council has not objected to the late submission and has considered its contents and submitted its views at the Final Comments stage of the appeal. Whilst landscape issues did not form part of the Council's refusal, I have taken the LVIA into account as part of my consideration of the value of the appeal site as open space, which would involve some consideration of qualities of the space in terms of character and appearance and to assist in my consideration of third-party representations. Given the Council has only focussed on two reasons for refusal, I have dealt with this issue under the *Other Matters* section of my decision.

Main Issues

3. Accordingly, the main issues in this appeal are firstly, whether the development would comply with local and national policies directed at controlling the location and rate of development and, secondly whether the loss of the site to development would prejudice the Council's approach to protecting open space in the interests of the wellbeing of its local community.

Reasons

Settlement policy

4. The development plan for the area consists of the Site Allocations and Management of Development Plan 2015 (SAMDev) and the Shropshire Local Development Framework Adopted Core Strategy 2011 (the Core Strategy). Policy CS1 of the Core Strategy sets out the Council's strategic approach to new development with further explanation of the Council's approach provided in policy MD1 of the SAMDev. Core strategy Policy CS3 sets out that

development within Market Towns and Other Key Centres such as Ludlow must take place within the identified development boundaries and on sites allocated for development. Policies MD1 and policy S10 as it relates to Ludlow, sets out that housing development will be delivered primarily on the allocated housing sites east of the A49 as set out in Schedule S10.1 and identified on the Policies Map as well as infill and windfall developments within the town's development boundary.

5. In addition to supporting the development of the allocated housing sites identified in Settlement Policies S1-S18, Policy MD3 states that residential development should meet the design requirements of the Local Plan and, on sites of five or more dwellings, include a mix and type of housing that has regard to local evidence and community consultation. It explains that the settlement housing guideline is a significant policy consideration. Where development would result in the number of completions plus outstanding permissions providing more dwellings than the guideline, decisions will have regard to the increase in number of dwellings relative to the guideline; the likelihood of delivery of the outstanding permissions; the benefits arising from the development; the impacts of the development, including the cumulative impacts of a number of developments in a settlement; and, the presumption in favour of sustainable development.
6. The appeal site lies within the development boundary for Ludlow and although not allocated for development, it constitutes a windfall site that could be acceptable for development in principle. I am not aware that the site has been put forward as a site allocation as part of the forthcoming and emerging Shropshire Local Plan although this has only recently been submitted for examination and so carries only limited weight in present time decision-making in any event. Neither is there any suggestion that the appellant has looked to provide local evidence to explain why the mix and type of housing proposed would be acceptable here or that this is as a result of genuine community consultation and involvement.
7. From the Council's evidence, in Ludlow between 2006/07 and 2020/21, a total of 515 dwellings have been completed and, at March 2021, there were 761 dwellings committed on sites with planning permission or through the prior approval process. I agree with the Council that the guideline figure has been exceeded to a significant extent. From what the Council contends, delivery rates have been lower in recent years but from both the evidence of small/medium and larger sites, there appears to be a strong prospect of continued delivery to a point where the residential development guideline identified in Policy MD3 will be exceeded significantly at 2026. That said, I recognise that the delivery of housing is a key ambition of Government and that Policy S10 should not be viewed as a ceiling.
8. Nevertheless, in the absence of any conflicting evidence to the contrary, I am satisfied that the housing requirements of Policy S10 will be exceeded during the plan period by a significant amount. Ceiling or no ceiling, the appeal development would be in serious conflict with the expectations of this Policy and undermine an up-to-date development plan as it applies to Ludlow. Even if the target figure is not regarded as a ceiling, I am also required to consider Policy MD3, which in relation to windfall developments, requires compliance with other relevant local plan policies to achieve sustainable development and I now turn to those below.

Open space

9. I would agree with the Council that whether an area of open space is public or private is immaterial in terms of how it is viewed by a local community and until the appellants acquired the site, from representations received from local people, it appears that the land has been used informally by the community for recreation for a long period of time. There is little argument therefore that the land is well-regarded by the local community although as the appellant suggests, it is probably true that by today, the site is a green space that the local community walk past rather than through.
10. Castle View Terrace is characterised by Victorian and Edwardian terrace and semi-detached properties generally located on the eastern side of the street with many fronting almost directly onto the road with shallow front gardens. The density of development in the area is fairly high and parking is difficult due to the narrowness of the road. Although the land has been used for grazing, the appeal site contributes positively to the amenity of the area by providing greenery and a break in the otherwise built-up area. Furthermore, the open nature of the site allows for extensive and attractive views across the town and the Teme Valley, to the Welsh Marches foothills beyond, providing a visual connection from this part of the town to the countryside.
11. The proposed terrace of six houses would front onto Castle View Terrace where the site is more level and would occupy a significant proportion of space. The two-storey development would affect views across the valley from the houses opposite. However, when viewed from the street, the proposal would result in the loss of much of the currently open aspect and associated amenity value of the site, resulting in harm to the character and environmental quality of the area. It would also impede views from the PRoW of the town and countryside and Ludlow Castle. Although the site is clearly within the urban area, at this point along Castle View Terrace and due to the landform immediately to the west, the site creates the impression and feel of a transitional space between the urban area and edge of countryside.
12. Although the appeal site is in private ownership, a public right of way runs in a north-south direction along the eastern fringes of the appeal site, which provides a link from New Road to Bringewood Rise. I note comments that the PRoW is extensively used by local people and from what I saw at my site visit, it is clear that the site does have recreational value for, and is much valued by, the local community. This has certainly been demonstrated through the extensive and well-thought-through comments received in relation to the application and appeal. In this regard, I note that the appellants propose to provide an area of publicly accessible landscaped open space as part of the development, which would be a benefit of this appeal development. However, the steep topography of these remaining areas would further limit informal recreational use to a significant degree.
13. It is also noted that 10 off-road parking spaces would be made available for use by existing residents of Castle View Terrace, where off-street parking appears problematical.
14. Despite the site being in private ownership as noted above, the proposed development would result in a loss of open space in an area which, according to the Council, has recognised deficiencies and where the countryside beyond is in intensive agricultural use and unavailable for community recreational use.

Whilst no specific evidence, such as studies or assessments of open space, has been provided that would support the formal protection of this space, the site provides one of the few green, open and meaningful spaces in the immediate locality.

15. The appellant has identified other areas of accessible natural greenspace in Ludlow, but none are within the immediate vicinity but rather outside the town and therefore not convenient to many users. From comments received and supported by what I gleaned from my site visit, there is no easy access to the River Corve ANG other than via a steep hill and I could not observe a connection to the larger ANG to the north-east other than one which would require the crossing of a busy trunk road.
16. The proposal involving the loss of a much-valued open space would therefore conflict with Policies CS6 of the Core Strategy and MD2 of the SAMDev. These Policies, amongst other things, seek to protect and enhance Shropshire's natural, built and historic environment by taking account of those features that contribute to local character and contribute to the health and wellbeing of local communities while preventing the loss of facilities unless adequate provision is made for their replacement. Turning to the the Glossary to the National Planning Policy Framework (the Framework), this defines open space as all open space of public value and which, amongst other things, are those that act as a visual amenity. Although the site is not specifically identified as protected open space in the development plan, it does have both amenity value and recreational value, which would be harmed by this development and where Paragraph 99 of the Framework should apply.

Other matters

17. The appellant's LVIA findings have not not been seriously questioned by the Council or contradicted in third party representations. I have no evidence to disagree with the LVIA methodology or its findings. Nevertheless, I have found that the development would lead to unacceptable loss of a much-valued area of open space and in this regard would also cause harm to visual amenity in respect of this loss.
18. My attention has been drawn to an argument that the proposed development would harm the appreciation of the settings of designated heritage assets including, Ludlow Castle and other listed buildings within the Ludlow Conservation Area and that I should assess these thereby following the duties set out in s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. However, the site itself is not a designated heritage asset and is some distance from Ludlow Castle and the Conservation Area for instance. As the site itself falls outside any meaningful association with these designated heritage assets and consequently would not lead to a position where the significance of any designated heritage asset would be harmed, I do not consider that I need to apply the statutory test in this instance.

Planning Balance and Conclusion

19. Although the proposal would not cause harm to designated heritage assets, the proposal would conflict with the development plan on the basis that there is no justifiable reason at present to depart from the Council strategic settlement policy that sets out to achieve realistic housing targets on allocated sites before releasing further development opportunities on the basis of sustainable

- development considerations. It would also conflict with SAMDev policy that provides the Council's criteria-based approach to the delivery of housing beyond the strategic housing guideline.
20. Although the appeal site is not protected open space, the development would undermine the overall aim of SAMDev Policy MD2 which seeks to achieve sustainable development, including through highlighting the importance of open space provision albeit in new development. This is consistent with Paragraphs 98 and 99 of the Framework which seeks to ensure that existing areas of open space are not built upon unless an assessment has been undertaken that they are surplus to requirements or that they would be replaced by equivalent or better provision and thereby recognising their importance for the health and well-being of communities.
 21. Paragraph 8 of the Framework outlines the overarching interdependent objectives for planning to achieve sustainable development: social, economic and environmental.
 22. In terms of the social objective, the benefit of construction of new homes is recognised. However, the housing delivery targets for Ludlow as identified in Policy S10 has already been exceeded by a considerable amount and thus Government's imperative is weakened. The appellant's arguments that the appeal site would be accessible to a wide range of shops and services of Ludlow is recognised. These factors weigh in favour of the scheme.
 23. However, the benefits would be modest, and would be outweighed by the harm to the health and well-being of the community which would result from the loss of open space and its associated amenity and recreation value. As a result, the social role of sustainable development would not be achieved.
 24. I acknowledge that the design and materials of the dwelling houses would be acceptable, and that no concerns have been raised in relation to ecological or highway issues. However, these factors, which represent a lack of harm, are neutral in the planning balance.
 25. Whilst I have found modest economic benefits and neutral-to-modest environmental benefits, these would not outweigh the overall social harms identified. The proposal is in direct conflict with the development plan and there are no other considerations that outweigh the harm identified. For the reasons given, I conclude that the conflict with the development plan is not outweighed by other considerations, including the Framework.
 26. I therefore conclude that the appeal should fail.

Gareth W Thomas

INSPECTOR

This page is intentionally left blank



Appeal Decision

Site visit made on 2 February 2022

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 February 2022

Appeal Ref: APP/L3245/W/21/3280391

Land at Hardwick Farm, Hardwick, Bishop's Castle SY9 5HT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Richard Cooke against the decision of Shropshire Council.
 - The application Ref 21/00305/PMBPA, dated 18 January 2021, was refused by notice dated 28 April 2021.
 - The development proposed is the conversion of agricultural building into dwelling (prior notification under Schedule 2, Part 3, Class Q of Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)).
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant submitted a structural assessment¹ along with this appeal. Although this information was not before the Council when it determined the application, I note that it had the opportunity to comment on the details of the assessment during the appeal. Accordingly, I consider that the Council would not be prejudiced by me considering the structural assessment thus I have had regard to it in my determination.

Main Issue

3. The main issue is whether the proposed development falls within the terms of the permitted development rights under Article 3, Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), with specific regard to the extent of physical works proposed.

Reasons

4. The permitted development right under Article 3, Schedule 2, Part 3, Class Q(a) and (b) of the GPDO allows the change of use of an agricultural building and any land within its curtilage to a dwelling house together with building operations reasonably necessary to enable the conversion, subject to various limitations and conditions as set out in paragraphs Q.1 and Q.2 of that Class.
5. Paragraph 105 of the Planning Practice Guidance (PPG) states that the right under Class Q assumes that the agricultural building is capable of functioning

¹ Structural Assessment, BJSE Ref: 21157, Revision A, 18/06/21

as a dwelling. The right permits buildings operations which are reasonably necessary to convert the building, which may include the installation or replacement of windows, doors, roofs and exterior walls. However, it is not the intention of the permitted development right to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. Therefore, it is only where the existing building is already suitable for conversion to residential use that the building would be considered to have the permitted development right.

6. The PPG also refers to the Hibbitt² judgement, in which it was found that where works would be so significant so as to amount to a rebuild or fresh build, this would go beyond what is considered a conversion and as such beyond the provisions of Class Q. Whether or not the proposed works go beyond the scope of conversion and would constitute a fresh build is a matter of planning judgement with reference to the particular circumstances of the case.
7. The appeal building is a steel framed dutch barn with a curved corrugated steel-clad roof and elevations consisting of corrugated steel cladding and brickwork. Internally there is a first-floor element to one end. The structural assessment demonstrates that the existing steel frame of the barn is suitable to support the first-floor of the proposed development and new roof panels. There is no evidence to the contrary before me. The appellant has also indicated that much of the existing steel cladding could be retained, as well as the partial brick gable wall. I can see no reason why the brick wall could not be retained.
8. However, the suggestion that the cladding could remain does not align with my observations at my site visit, during which I observed that the wall cladding was piecemeal in areas with vast parts missing or in disrepair, particularly at lower levels. The roof was in slightly better condition however there were some holes present. A Structural Appraisal and Report, by David Humphreys Limited and dated 10th September 2020, was submitted with the planning application and includes recommendations for the proposal. These include the complete replacement of roof and external wall cladding, new ground floor concrete slab and the replacement of three damaged floor joists. This report also indicates that work is required to make the building watertight. These recommendations confirm my assessment of the building.
9. I acknowledge that the installation of windows, doors, roofs and exterior walls may amount to works reasonably necessary for the building to function as a dwellinghouse. Nevertheless, and even if the existing frame is identified as being in good structural condition, it would only provide a modest amount of help for the proposed development. The totality of the works required, namely the wholesale replacement of the existing exterior walls and roof, would be a fundamental change as none of the original external fabric would remain. I do not therefore consider that the building is already suitable for conversion to residential use as the extent of the building operations would go beyond the definition of what could reasonably be required for the works to constitute a conversion and would be more akin to a fresh build.
10. Parallels have been drawn with the particulars of the development concerned by the Hibbitt case, and other appeal decisions have been referenced.

² Hibbitt and Another v Secretary of State for Communities and Local Government (1) and Rushcliffe Borough Council (2) [2016] EWHC 2853 (Admin)

However, as noted above, each case should be determined on its own merits having regard to the particular circumstances. Moreover, I have only been provided with the Inspector's decisions for the other examples therefore I cannot make a fully reasoned comparison.

11. I note the Council's concerns regarding the curtilage that has been identified within the proposed development. However, given my findings above which lead me to dismiss the appeal, there is no need for me to consider this matter further.

Conclusion

12. For the reasons set out above, and taking all other matters raised into account, I conclude that the proposal would not comply with the description of permitted development under the provisions of Class Q and therefore the appeal should be dismissed.

H Ellison
INSPECTOR

This page is intentionally left blank