



## Appeal Decision

Site visit made on 30 April 2018

**by Alexander Walker MPlan MRTPI**

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

**Decision date: 23<sup>rd</sup> May 2018**

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**Appeal Ref: APP/L3245/W/18/3192885**

**Gestiana, Woodlands Road, Broseley TF12 5PU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr David Poyner on behalf of Gestiana Limited against the decision of Shropshire Council.
  - The application Ref 17/01834/FUL, dated 20 April 2017, was refused by notice dated 19 December 2017.
  - The development proposed is the demolition of existing dwelling and construction of 5no. bungalows with rooms in roof space.
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### Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing dwelling and construction of 5no. bungalows with rooms in roof space at Gestiana, Woodlands Road, Broseley TF12 5PU in accordance with the terms of the application, Ref 17/01834/FUL, dated 20 April 2017, subject to the conditions contained in the Schedule attached to this decision.

### Procedural Matter

2. Prior to the Council's determination of the planning application, the scheme was amended, which included the reduction in the number of dwellings from six to five and the omission of the type C dwelling as originally submitted. The application was determined on the basis of the amended drawings. Accordingly, I have determined the appeal on that basis, which is reflected in my description of the development, which also follows that set out in the Council's decision notice and the appeal form.

### Application for costs

3. An application for costs was made by Mr David Poyner against Shropshire Council. This application is the subject of a separate Decision.

### Main Issues

4. The main issues are the effect of the development on the living conditions of the occupants of No 27 Woodlands Road, The Willows, Spring Meadow and No 81a King Street, with particular regard to privacy; and, the effect on the character and appearance of the area, in particular the Broseley Conservation Area.

## Reasons

5. The rear elevations of the dwellings would be in proximity of the rear gardens of a number of neighbouring residential properties. The first reason for refusal concerns the effect of the proximity of Plots 2, 3 and 5 and their fenestration on the existing adjacent properties. These three dwellings would have a single dormer window that would serve the first floor bedroom.
6. Plot 2 would be adjacent to No 27 Woodlands Road and would roughly follow the existing building line of other properties along Woodlands Road. Although there would be a number of windows in the rear elevation of this property, they would be at ground floor level. Whilst the dwelling would be on a slightly higher ground level than the neighbouring properties and would be in proximity of the boundary between them, I am satisfied that an appropriately worded condition could ensure that suitable boundary treatments are erected to prevent any overlooking from the ground floor windows. The only window at first floor would be the dormer window, which would be in the south side elevation. Given the orientation of the window, views of the rear garden of No 27 could be attainable from it. However, these views would be at an oblique angle and therefore any loss of privacy from the rear garden of No 27 would not be so significant as to represent material harm to the living conditions of its occupants.
7. Due to the same positioning and orientation of its fenestration as Plot 2, I similarly find that that Plot 3 would not result in any significant harm to the privacy of No 27.
8. With regard to the relationship of Plot 5 to No 27 Woodlands Road, whilst the dormer window would face the rear garden of No 27, it would be set back a sufficient distance from the boundary between the two properties to ensure that there would not be any significant harm by way of overlooking. I have had regard to the difference in ground levels between these plots and No 27. However, I do not consider that this would exacerbate overlooking to such an extent that it would have any material harm on privacy.
9. Plot 5 would also be in proximity of the rear gardens of Spring Meadow, The Willows and No 81a, King Street, which are to the south of the proposed dwelling. There would be no windows in the south elevation of Plot 5, except at ground level. Notwithstanding the slight difference in ground levels, as with Plots 2 and 3, suitable boundary treatment would ensure no overlooking from the ground floor windows. With regard to the dormer window, it would not allow any views of Spring Meadow or The Willows and would only have very minimal views of a small section of the rear garden of No 81a, which would be from an oblique angle.
10. I find therefore that the proposal would not have any significantly harmful effect on the living conditions of the occupants of No 27 Woodlands Road, The Willows, Spring Meadow and No 81a King Street with regard to privacy. As such, it would comply with Policy CS6 of the Shropshire Council Adopted Core Strategy (CS) 2011, which seeks to safeguard residential amenity. In addition, I find no conflict with the guidance contained in the Shropshire Council Type and Affordability of Housing Supplementary Planning Document (SPD), which states that it is important to ensure that developments do not have unacceptable consequences for neighbours, such as overshadowing or loss of privacy and protect the living conditions of neighbours who might be affected.

Furthermore, it would comply with paragraph 17 of the National Planning Policy Framework, which seeks to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

### *Character and Appearance*

11. The appeal site comprises a single, detached dwelling set within extensive gardens. The north west boundary of the site lies adjacent to the Broseley Conservation Area (the CA). The CA comprises tightly built houses centred around the High Street. Beyond this, particularly to the north of the town, development becomes less formal with narrow winding lanes predominantly lined with cottages. The variety of building patterns and densities makes a positive contribution to the CA.
12. The appeal site is nestled between the traditional cottages along Woodlands Road to the north and east and the modern, uniform dwellings to the west and south on King Street and Ashmore Crescent. Plot sizes within the vicinity of the site vary considerably with properties immediately to the east having very large gardens and those to the south east and west being generally tighter with smaller gardens. Whilst the proposed plot sizes would be significantly smaller than the larger neighbouring plot sizes, they would be comparable with others, particularly those on the opposite side of Woodlands Road and on King Street and Ashmore Crescent.
13. I have had regard to the extant outline planning permission<sup>1</sup> for the erection of three dwellings on the site and the retention of the existing dwelling. I acknowledge that the approved dwellings would have frontages with Woodlands Road. Nevertheless, whilst many properties on Woodlands Road have road frontages, including those immediately to the east, there are many others that don't. Some are accessed via long driveways off Woodlands Road, including a small enclave of properties a short distance to the east of the site. I also note that No 8 Woodlands Road, which is accessed via the appeal site, has no road frontage. Therefore, I do not consider that the lack of road frontage would significantly disrupt the existing pattern of development in the locality.
14. There is a boundary wall to the front of the site, some of which would be lost. The wall appears to be of some age and much of it is overgrown by hedging. Although boundary walls are commonplace throughout the vicinity of the site, I do not consider that the wall in question makes a significant contribution to the character and appearance of the area.
15. Overall the proposed dwellings would assimilate well into the surrounding built environment, respecting and reflecting the existing pattern of development and plot densities. I find therefore that it would not significantly harm the character or appearance of the area and would have a neutral effect on, and therefore preserve, the character and appearance of the CA. As such, it would comply with Policies CS6 and CS17 of the CS, which, amongst other things, seek to ensure that development protects the built and historic environment and is appropriate in pattern to the local context and character. It would also comply with Policies MD2, MD13 and S4 of the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan December 2015,

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<sup>1</sup> LPA Ref 14/01605/OUT

which seek to ensure that development respects the character of the area, in particular the Broseley Area, and protects heritage assets.

### **Other Matters**

16. I acknowledge the concerns regarding the effect of the development on highway safety. During my site visit I observed that the road is relatively narrow in parts and the access to the site would be on a bend. However, I am satisfied that there would be adequate visibility splays to ensure vehicles can access/egress the site without any significant detriment to highway safety. Furthermore, whilst the proposal would increase the amount of traffic in the locality, there is no substantive evidence that this would have any severe effect on highway or pedestrian safety, particularly as the overall increase in dwellings on the site from that already approved would only be one. Moreover, the proposal would provide adequate on-site parking provision. I note that the local highway authority do not object to the proposal, which I attribute significant weight.
17. Policy S4 of the SAMDev states that around 200 dwellings are planned for Broseley over the plan period. Whilst completions and commitments already exceed this figure, it is only a guideline and should not be read as a ceiling to development. I note that the Broseley Town Council Town Plan 2013-2026 states that housing development within the area should be limited to 36 additional homes over and above the Dark Lane development and plots already granted planning permission. The site already benefits from outline planning permission for three dwellings, including the retention of the existing dwelling. Therefore the net increase would be one dwelling. The site is located within the settlement and represents a sustainable location. Therefore, based on the evidence before me, I do not consider that the net increase of one dwelling undermines the Council's housing strategy.
18. With regard to any trees that are planted as part of the proposed development, an appropriately worded condition would ensure they are retained for a period of time to ensure they establish. There is no substantive evidence to indicate that they would be removed following this period. In addition, the preliminary Ecological Appraisal and Bat Survey prepared by Gerald Longley Ecological Consultants, dated 10 August 2017, indicates that the site is of low ecological value and subject to appropriate mitigation and enhancement measures the proposal would not have any significantly harmful effect on wildlife. The loss of the hedgerow to create the access would be offset by additional hedge planting within the site.
19. With regard to land instability, there is no substantive evidence that the proposal would exacerbate any existing issues. An appropriately worded condition would ensure that any potential mine shafts on site are adequately addressed.
20. I note the comments regarding the applicant's name. However, any planning permission granted would run with the land, regardless of the name of the applicant. Therefore this matter has had no bearing on my consideration of the planning merits of the proposal.

## **Conditions**

21. I have considered the conditions suggested by the Council, having regard to the six tests set out in the Framework. For the sake of clarity and enforceability, I have amended the conditions as necessary.
22. For the avoidance of doubt it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans.
23. In the interests of public safety, a condition is necessary regarding an investigation into mine shafts on the site and potential contamination.
24. A condition regarding foul and surface water drainage details to be submitted, approved and implemented is necessary in the interests of flood prevention.
25. In the interests of the character and appearance of the area and safeguarding residential amenity, a condition is necessary regarding finished floor levels
26. In the interests of the character and appearance of the area conditions are necessary regarding external materials, landscaping and the protection of retained trees, including those adjacent to Plot 1.
27. A condition regarding the access, turning, parking areas and visibility splays is necessary in the interests of highway safety.
28. In the interests of highway safety and the protection of residential amenity, a condition is necessary regarding a Construction Management Plan.
29. In the interests of protecting residential amenity, conditions are necessary regarding hours of demolition, construction and deliveries. For the same reason and in the interests of the character and appearance of the area, I also consider that due to the proximity of the site to neighbouring residents and each other there is justification for the removal of permitted development rights.
30. Conditions are necessary regarding the provision of bat and bird boxes and a lighting plan in the interests of protecting/enhancing biodiversity.

## **Conclusion**

31. For the reasons given above, having regard to all matters raised, the appeal is allowed.

*Alexander Walker*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 17017 000A, 17017 001B and 17017 002B.

- 3) Before development commences an investigation into the mine shaft on site, together with details of any necessary treatments to ensure the structural integrity of the site, shall be submitted to and approved in writing by the local planning authority. Any works required by this report shall be completed prior to the first occupation of any of the dwellings hereby permitted.
- 4) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
  - i) a survey of the extent, scale and nature of contamination;
  - ii) the potential risks to:
    - human health;
    - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
    - adjoining land;
    - ground waters and surface waters;
    - ecological systems; and
    - archaeological sites and ancient monuments.
- 5) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.
- 6) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.

- 7) No development shall take place until a monitoring and maintenance scheme to demonstrate the effectiveness of the proposed remediation shall have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented, and the reports produced as a result, shall be submitted to the local planning authority within 21 days of the report being completed and approved in writing within 21 days of receipt. If any of these reports identifies any discrepancy with the verification report then a protocol, including timescale, for the necessary remediation shall be submitted to the local planning authority within a further 21 days and approved in writing within 21 days of receipt. Thereafter, any necessary remediation and verification shall be carried out in accordance with the approved protocol.
- 8) No development shall take place until a scheme of foul drainage and surface water drainage has been submitted to and approved in writing by the local planning authority. The approved scheme shall be fully implemented prior to the first occupation of any of the dwellings hereby permitted.
- 9) No development shall take place until details of the proposed finished ground floor levels of the dwellings, relative to existing ground levels, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 10) Prior to the above ground works commencing samples of the roofing materials, the materials to be used in the construction of the external walls and hard surfacing shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 11) No development shall take place (including demolition, ground works and vegetation clearance) until a landscaping plan has been submitted to and approved in writing by the local planning authority. The plan shall include:
  - a) Planting plans, creation of wildlife habitats and features and ecological enhancements (e.g. hibernacula, integrated bat and bird boxes, hedgehog-friendly gravel boards and amphibian-friendly gully pots);
  - b) Written specifications (including cultivation and other operations associated with plant, grass and wildlife habitat establishment);
  - c) Schedules of plants, noting species (including scientific names), planting sizes and proposed numbers/densities where appropriate;
  - d) Native species used are to be of local provenance (Shropshire or surrounding counties);
  - e) Details of trees and hedgerows to be retained and measures to protect these from damage during and after construction works;
  - f) Implementation timetables; and
  - g) Details of the appearance, positioning, height and materials for garden boundary walls (including those on the alignment of the visibility splays), fences and gates.

The plan shall be carried out as approved, with garden boundary walls and fences constructed/installed before the dwellings that they are associated with are first occupied.

- 12) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 13) The access, turning area, parking areas and visibility splays shall be constructed in accordance with details to be approved in writing by the local planning authority, with the access and turning area constructed to at least base course macadam level and the visibility splays provided before any dwelling is first occupied. The turning and parking areas shall thereafter be retained for those purposes and the visibility splays shown on the approved drawings kept clear of obstruction.
- 14) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.
- 15) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
  - i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development;
  - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - v) wheel washing facilities;
  - vi) measures to control the emission of dust and dirt during construction;
  - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works; and
  - viii) A Traffic Management Plan.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 16) Demolition, construction works or deliveries shall not take place outside 7.30am - 6.00pm Monday to Friday, and 8.00am - 1pm Saturdays, with no work taking place on Sundays, Bank or Public holidays.



- 17) Prior to the first occupation of the dwellings hereby permitted, the makes, models and locations of bat boxes shall be submitted to and approved in writing by the local planning authority and installed. A minimum of 3 external woodcrete bat boxes or integrated bat bricks, suitable for nursery or summer roosting for small crevice dwelling bat species, shall be erected on the site. The boxes shall be sited at an appropriate height above the ground, with a clear flight path and where they will be unaffected by artificial lighting. The boxes shall thereafter be maintained for the lifetime of the development.
- 18) Prior to first occupation of the dwellings hereby permitted, the makes, models and locations of bird boxes shall be submitted to and approved in writing by the local planning authority and installed. A minimum of 3 artificial nests, of either integrated brick design or external box design, suitable for swifts, sparrows, house martins, starlings, and/or small birds shall be erected. The boxes shall be sited at least 2m from the ground on a suitable tree or structure at a northerly or shaded east/west aspect (under eaves of a building if possible) with a clear flight path, and thereafter maintained for the lifetime of the development.
- 19) Before the dwelling on plot 1 is first occupied details of the form of construction for the parking area and path within the curtilage of that dwelling shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and shall be retained as such thereafter.
- 20) Prior to the installation of any external lighting on the site, a lighting plan shall be submitted to and approved in writing by the local planning authority. The lighting plan shall demonstrate that the proposed lighting will not impact upon ecological networks and/or sensitive features, e.g. bat and bird boxes (required under separate planning conditions). The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust's Artificial lighting and wildlife: Interim Guidance: Recommendations to help minimise the impact artificial lighting (2014). The development shall be carried out in accordance with the approved details and thereafter retained for the lifetime of the development.
- 21) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development relating to schedule 2 part 1 classes A - F shall be erected, constructed or carried out.