



Committee and date  
South Planning Committee  
30 July 2019

## Development Management Report

Responsible Officer: Tim Rogers  
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### Summary of Application

<b>Application Number:</b> 18/04662/FUL	<b>Parish:</b>	Worthen With Shelve
<b>Proposal:</b> Erection of dwelling and detached garage		
<b>Site Address:</b> Proposed Dwelling To The North Of Stiperstones Snailbeach Shropshire		
<b>Applicant:</b> Mr A Davies		
<b>Case Officer:</b> Trystan Williams	<b>email:</b> <a href="mailto:planningdmsw@shropshire.gov.uk">planningdmsw@shropshire.gov.uk</a>	

**Grid Ref:** 336317 - 300667



Contact: Tim Rogers (01743) 258773

**Recommendation:** Refuse

**Recommended reasons for refusal:**

1. The site lies beyond the established built-up area of Stiperstones village, in open countryside where, in the absence of any exceptional circumstances or evidence that the settlement housing guideline is unlikely to be met, a new open-market dwelling would fundamentally conflict with Policies CS1, CS4, CS5 and CS11 of the Shropshire Local Development Framework Adopted Core Strategy and Policies MD1, MD3, MD7a and S2 of the Shropshire Council Site Allocations and Management of Development Plan. Whilst the scheme might deliver some economic and social benefits these would be very modest and equally applicable to other more sustainable and policy-compliant sites within the designated settlements, and hence would not outweigh the disadvantages.
2. On account of the site's physical and visual separation from the established housing to the south and east, and also its prominence in elevated views from the east, the proposed dwelling would detract from the essentially open, verdant character and scenic quality of the Shropshire Hills Area of Outstanding Natural Beauty, contrary to the National Planning Policy Framework, Policies CS6 and CS17 of the Shropshire Local Development Framework Adopted Core Strategy, and Policies MD2 and MD12 of the Shropshire Council Site Allocations and Management of Development Plan.

**REPORT**

**1.0 THE PROPOSAL**

- 1.1 This application seeks full planning permission to erect a two-storey open-market dwelling, faced in brick under a gabled and tiled roof, plus a detached double garage alongside. The submitted plans also show a new vehicular access off an adjacent track/bridleway, and a package treatment plant for foul drainage.
- 1.2 The proposals are essentially unchanged from previous application 17/06019/FUL, which was withdrawn after officers were given delegated authority to refuse it owing to concerns about the site's location and the development's visual impact.

**2.0 SITE LOCATION/DESCRIPTION**

- 2.1 Measuring 0.13 hectares, the site is the southwest corner of a field beyond a track/bridleway heading northwest out of Stiperstones village, which lies at the western foot of the Stiperstones ridge in the Shropshire Hills Area of Outstanding Natural Beauty (AONB). This track serves three existing dwellings to the south, the closest being a late 20<sup>th</sup> Century red brick bungalow ('Lowland View') diagonally opposite, plus a sewage treatment works directly opposite. It then crosses a tree/hedge-lined ditch before continuing to Hogstow Farm some 200 metres away. To the southeast it forks in two, both branches rising steeply to oblique junctions with the Class C road between Plox Green and The Bog, which runs elevated along the field's eastern edge. An outlying stone cottage (No. 1) stands behind trees across the road.

### **3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION**

- 3.1 In accordance with the Council's adopted 'Scheme of Delegation' the application is presented to the planning committee for determination following a request from the Local Member, made within the relevant time limit and based on material planning considerations. It should also be noted that the officer recommendation of refusal is contrary to the Parish Council's position of support.

### **4.0 COMMUNITY REPRESENTATIONS**

#### **4.1 Consultee comments**

- 4.1.1 Worthen with Shelve Parish Council – support

- 4.1.2 Shropshire Council Affordable Housing – no objection:

Although the Council considers there to be an acute need for affordable housing in Shropshire, its housing needs evidence base and related policy predate a Court of Appeal judgment and subsequent changes to the Government's Planning Practice Guidance (PPG) regarding the use of Section 106 agreements to secure affordable housing contributions. On balance, therefore, if the development is otherwise plan-compliant then at this time national policy prevails and no contribution is required.

- 4.1.3 Shropshire Council Flood and Water Management – comment:

Full details and surface water and foul drainage systems should be secured by condition. Furthermore, because the site is mapped as being at risk of groundwater flooding, the level of the water table should be established if infiltration techniques are proposed. If soakaways are unfeasible, a suitably designed attenuation system should be used instead.

- 4.1.4 Shropshire Council Highways Development Control – no objection:

The proposed access, parking and turning facilities are adequate. However it should be noted that occupiers would have to walk the length of the access track in order to put out and retrieve refuse on collection days, and that a smooth, level space is required for temporary roadside bin storage without obstructing the highway or access visibility splays.

- 4.1.5 Any permission granted should include informatives advising on the need to keep roads clear of mud and surface/waste water from the site, and the requirement for a licence for any works on or abutting highway land.

- 4.1.6 Shropshire Hills AONB Partnership – comment:

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

4.1.7 Shropshire Council Rights of Way – comment:

The site is accessed via a route recorded as a public bridleway, which does not appear to carry public vehicular rights. The applicant/developer must satisfy themselves that they have sufficient access rights, as these would not be conveyed by the granting of planning permission, and it is a road traffic offence to drive a motor vehicle on a public bridleway without lawful authority. Furthermore, no works which might affect the bridleway should be carried out without prior approval from the Rights of Way Officer.

4.1.8 Shropshire Council Ecology – comment:

The site has been surveyed by a licensed ecologist, who recommends:

- a 10-metre wider buffer zone to separate the development from the ditch/stream along the western boundary;
- planting scattered native shrubs/small trees, and a native hedgerow; and
- providing bat and bird boxes on the new building and/or on existing trees.

These measures should be secured by condition, whilst a further condition should control external lighting in order to minimise disturbance to any foraging or commuting bats. Additionally, informatives should advise on the legal status of bats and nesting birds, and on appropriate landscaping species.

4.1.9 The Hogstow Meadows Local Wildlife Site (LWS) lies to the north. However it is on higher ground than the stream valley, and so with appropriate precautions (i.e. establishment of the buffer zone during construction, and use of a package treatment plant for foul drainage) the development should have no residual adverse impact.

4.1.10 The hillside to the east is part of the Stiperstones and the Hollies Special Area of Conservation (SAC). However this would not be affected by drainage from the development since it comprises higher ground. Moreover a development of this scale and nature is unlikely to subject the SAC to additional recreational pressure, and since no effect pathways have been identified under the Habitat Regulations Assessment (HRA) process, there is no legal barrier to planning permission being granted. Nevertheless Natural England should also be consulted.

4.1.11 Natural England – comment:

It is noted that Council officers have screened the proposal in accordance with the Conservation of Species and Habitats Regulations 2017, and it is agreed that significant effects on the nearby SAC are unlikely. The SAC is also designated at a national level as a Site of Special Scientific Interest (SSSI), but again this development is unlikely to damage or destroy any particular interest features.

4.1.12 The local planning authority should also consider potential impacts on landscape character, protected and priority species or habitats, any locally designated ecological or geological sites, ancient woodland and veteran trees, as well opportunities for environmental enhancements.

## 4.2 Public comments

4.2.1 None

## 5.0 THE MAIN ISSUES

- Principle of development
- Affordable housing contribution
- Layout, scale, design and impact on landscape
- Access and highway safety
- Ecology
- Flood risk and drainage
- Residential amenity

## 6.0 OFFICER APPRAISAL

### 6.1 Principle of development

6.1.1 A key objective of both national and local planning policies is to concentrate residential development in locations which promote economic, social and environmental sustainability. Specifically the Council's Core Strategy Policies CS1, CS3, CS4, CS5 and CS11 seek to steer new open-market housing to sites within market towns, other 'key centres' and certain named villages ('Community Hubs and Clusters') as identified in the Site Allocations and Management of Development (SAMDev) Plan. Isolated or sporadic development in open countryside (i.e. outside the designated settlements) is generally regarded as unacceptable unless there are exceptional circumstances as outlined in Core Strategy Policy CS5 and SAMDev Policy MD7a.

6.1.2 The inclusion of Stiperstones village as a component of a Community Cluster under SAMDev Policies MD1 and S2 implies broadly that the location is sustainable, and carries considerable weight, with the National Planning Policy Framework (NPPF) stating that proposals which accord with an up-to-date local plan should be approved without delay. Policy S2 gives a guideline of around fifteen additional dwellings across the Cluster by 2026, with a preference for no more than five during each third of the Plan period, and besides conversion schemes the intention is for these to comprise infill development on suitable small-scale 'windfall' sites within the named settlements. Although development boundaries have not been designated, and the Council's policies do not explicitly define infill, the explanatory text accompanying Core Strategy Policy CS4 confirms that, in order to avoid fragmented development, new housing must be located in the settlements themselves and not on adjoining land or in the countryside in-between.

In general Stiperstones has a linear pattern of development, with an almost continuous ribbon of housing and other buildings along the 'main' road. At its north end this culminates with Lowland View, and currently there are no properties across the track/bridleway to Hogstow Farm. In fact looking north from this point, and also looking down from the stretch of road to the east, there is a marked

6.1.3 change to open fields, with long unbroken views down the valley. Hogstow Farm is not visible, and neither does the application site directly oppose or relate visually to No. 1 further east, instead being separated by the remainder of the field, the road itself and the considerable difference in levels. Officers therefore feel that the development would encroach beyond the edge of the established built-up area of the settlement and into the surrounding countryside, and hence that it is contrary to the aforementioned policies.

The applicant's agent and the Council's Local Member suggest the scheme is comparable with approved applications for new dwellings at Pennerley (ref. 18/00924/OUT), Marton (18/01453/FUL) and Priest Weston (15/02546/OUT). However the case officer believes there are a number of key differences which committee members should take into account, specifically:

- 6.1.4
- Stiperstones has a much tighter-knit pattern of development than Pennerley, which by contrast is extremely scattered/dispersed, with very few of its existing dwellings sharing contiguous boundaries and there being no distinct edge. In that context it is more difficult to identify 'conventional' infill plots.
  - In the Marton case some weight was given to the fact that the number of new dwellings approved within that Cluster was very low relative to the SAMDev guideline, and it was also noted that there are limited opportunities for infilling elsewhere in the village. This is not the case in the Cluster including Stiperstones, where the number of approvals already exceeds the housing guideline.
  - In any event, in all three of those earlier cases the sites do actually share a contiguous boundary with an existing dwelling (or at least sit between other buildings) and lie directly opposite another. As described already that is not the case with the current site.

6.1.5 In some cases planning agents have argued that Policies CS5 and MD7a merely give *examples* of special circumstances where new housing might be permissible outside settlements, and that these should not be seen as exhaustive. Certainly, however, the policies do not expressly support market housing in the countryside, stating instead that it should be "strictly controlled". SAMDev Policy MD3, meanwhile, does provide some scope for "other sustainable housing development", but this is qualified by a requirement to also have regard to the other relevant local plan policies and to the likelihood of first meeting the housing guidelines *within* the designated settlements. As mentioned already the number of new dwellings already approved in this particular Cluster, and moreover the fact that the Council has a sufficient five-year supply of deliverable housing land overall, suggests there is no pressing need to approve market housing on peripheral or outlying sites, and this view is endorsed by the majority of recent appeal decisions.

6.1.6 There has also been some wider debate about whether or not there is a freestanding presumption in favour of sustainable development under the National Planning Policy Framework (NPPF), irrespective of an up-to-date local plan being in place. In *Barwood Strategic Land II LLP vs East Staffordshire Borough Council and Another* (ref. C1/2016/4569), a High Court judge ruled that a planning inspector had misconceived the NPPF in relying on it to justify a large housing development

outside the development boundary of Burton-on-Trent, contrary to East Staffordshire Borough Council's recently adopted local plan. Furthermore he confirmed that, as a statement of planning policy rather than a statute, the NPPF does not have the same weight as Section 38(6) of the Planning and Compulsory Purchase Act 2004, which effectively gives precedent to the local plan where it is up-to-date. Indeed this is clarified in subsequently updated versions of the NPPF, which state: "The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan..., permission should not usually be granted.". In any event the current scheme is not considered sustainable in that it would result in sporadic development poorly related to the established pattern of this settlement, and which would detract from the wider landscape (see Section 6.3).

- 6.1.7 It is acknowledged that the scheme would have clear personal benefits to the applicant, but no specific local housing need or other exceptional circumstances have been demonstrated, and indeed the proposal is for an unfettered property which could be sold at any time. Furthermore, whilst there may be some wider social and economic benefits in terms of boosting housing supply in general, providing local employment during construction and increasing patronage of local services longer-term, in these respects the impacts of just one dwelling would be negligible, and equally applicable to new housing within the confines of the Cluster settlements. Consequently officers do not find that the benefits would offset the disadvantages in terms of undermining the Council's adopted housing strategy and causing landscape harm, and overall, the development is considered to be unacceptable in principle.

## 6.2 **Affordable housing contribution**

- 6.2.1 The Affordable Housing Team's comments reference the Court of Appeal decision which led to the reinstatement of a Written Ministerial Statement and Government PPG advising against the use of planning obligations to secure tariff-style affordable housing contributions below certain thresholds. This is now reinforced by the revised NPPF, which states categorically that affordable housing provision should not be sought in connection with small-scale developments. It must therefore be accepted that the Council's policies in this respect are out-of-date and can no longer be given significant weight.

## 6.3 **Layout, scale, design and impact on landscape**

- 6.3.1 Core Strategy Policy CS4 requires development in Community Clusters to be of a scale and design sympathetic to the character of the settlement and its environs, and to satisfy the more general design requirements under Policy CS6 and SAMDev Policy MD2. These expect all development to reinforce local distinctiveness in terms of building forms, scale and proportion, heights and lines, density and plot sizes, as well as materials and architectural detailing. Furthermore, Paragraph 172 of the NPPF requires great weight to be given to conserving and enhancing landscape and scenic beauty within AONBs.

6.3.2 In this case, as mentioned above, the land north of the track/bridleway has a fundamentally rural character and open aspect in marked contrast to the housing on the south side, and this sense of leaving the village and entering largely undeveloped countryside is clearly appreciable in elevated views from the road and hillside to the east. Inevitably, even with landscaping, the introduction of a new domestic property and associated paraphernalia here, bordered by agricultural land on three sides and poorly related to the pattern of the established housing to the south, would detract somewhat from this character and scenic quality. The scheme is therefore felt to be contrary to the aims and objectives of the AONB designation and the particularly high status of protection that conveys, especially as the visual harm would not be offset by the very modest social and economic benefits.

6.3.3 It is noted that the scale of the house is modest and its simple form and detailing reasonably traditional. If members are minded to grant permission, precise details/samples of the external finishes should be secured by condition.

#### 6.4 **Access and highway safety**

6.4.1 Because of the acute angle of the junction, visibility is severely restricted when turning right from the southern branch of the track onto the public highway. Nevertheless it would perhaps be difficult to substantiate a refusal on highway safety grounds given the lack of objection from the Highways Development Control Team, the fact that several existing dwellings already use this junction, and that even the 'main' road is relatively lightly trafficked.

6.4.2 The proposed entrance into the site itself, and the parking and turning provision, is satisfactory. Meanwhile refuse collection should prove no more problematic than it is at numerous other rural properties.

#### 6.5 **Ecology**

6.5.1 As summarised above the Ecology Team has ruled out significant effects on the nearby SAC/SSSI, and neither has Natural England raised any concerns in this respect. The full HRA can be viewed on the 'Planning' pages of the Council's website, dated 5<sup>th</sup> November 2018.

6.5.2 It is noted that the Ecology Team raises no insurmountable concerns regarding the LWS, whilst the Shropshire Wildlife Trust was also consulted but did not respond.

6.5.3 The Ecology Team is also satisfied that issues of protected and priority species could be addressed through conditions and informatives. It should be noted that details of proposed bat and bird boxes are in fact included in the ecological consultant's report.

#### 6.6 **Flood risk and drainage**

6.6.1 Despite the risk of groundwater flooding, and the NPPF seeking to steer development to areas with the lowest risk of flooding from any source, almost all of



Stiperstones village is at similar risk, so given its designation as a Cluster settlement it is reasonable to conclude that the NPPF requirements are broadly satisfied. Furthermore the Flood and Water Management Team is satisfied that any residual risk can be addressed through a condition requiring sustainable drainage systems, and certainly this approach has been followed elsewhere.

## 6.7 Residential amenity

6.7.2 There are no concerns in this regard given the distances from the neighbouring properties.

## 7.0 CONCLUSION

7.1 A new open-market dwelling in this countryside location, beyond and visually distinct from the Cluster settlement of Stiperstones, would fundamentally conflict with the formally adopted and up-to-date local development plan. Whilst there would be some benefits these would be very modest and not specific to this site, and hence would not sufficiently outweigh the harm which this outlying and visually prominent development would cause to the essentially open character and scenic beauty of the AONB. For these reasons it is recommended that planning permission is refused.

## 8.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL

### 8.1 Risk management

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

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

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

### 8.2 Human rights

8.2.1 Article 8 of the First Protocol of the European Convention on Human Rights gives the right to respect for private and family life, whilst Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of

the community.

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

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

### 8.3 **Equalities**

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

## 9.0 **FINANCIAL IMPLICATIONS**

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

## 10.0 **BACKGROUND**

### **Relevant Planning Policies:**

#### Central Government Guidance:

National Planning Policy Framework

#### Shropshire Local Development Framework:

##### Core Strategy Policies:

CS1 - Strategic Approach

CS4 - Community Hubs and Community Clusters

CS5 - Countryside and Greenbelt

CS6 - Sustainable Design and Development Principles

CS7 - Communications and Transport

CS9 - Infrastructure Contributions

CS11 - Type and Affordability of housing

CS17 - Environmental Networks

CS18 - Sustainable Water Management

##### SAMDev Plan Policies:

MD1 - Scale and Distribution of Development

MD2 - Sustainable Design

MD3 - Managing Housing Development

MD7A - Managing Housing Development in the Countryside

MD12 - Natural Environment

S2 – Bishop’s Castle Area Settlement Policy

Supplementary Planning Documents:  
SPD Type and Affordability of Housing

**Relevant Planning History:**

17/06019/FUL – Erection of dwelling and detached garage (withdrawn June 2018)

**11.0 ADDITIONAL INFORMATION**

**View details online:**

<https://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=details&keyVal=PGCKYNTDGWN00>

**List of Background Papers:**

Application documents available on Council website

**Cabinet Member (Portfolio Holder):**

Cllr G. Butler

**Local Member:**

Cllr Heather Kidd

**Appendices:**

Appendix 1 – Informatives

## **APPENDIX 1 – INFORMATIVES**

1. In arriving at this decision the Council has endeavoured to work with the applicant in a positive and proactive manner, as required by Paragraph 38 of the National Planning Policy Framework, by giving clear pre-application advice and explaining the relevant planning policy considerations. However, it has not been possible to reach an agreed solution in this instance, and as it stands the proposal is considered contrary to policy for the reasons set out above.

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