

Recommendation: Refuse**Recommended reasons for refusal:**

1. The existing building has no historic or architectural value which would justify its retention and reuse as an open-market dwelling. In any event the extent of the proposed enlargement is such that the scheme would be tantamount to erecting an entirely new dwelling which, in this countryside location outside any settlement designated for residential development, would directly conflict with the Council's housing strategy and would not represent sustainable development in the round. Though there may be some social and economic benefits these would be negligible, no significant weight can be given to the applicant's family circumstances, whilst an absence of more severe landscape, flood risk or other impacts does not offset the fundamental conflict with Policies CS1, CS3, CS4 and CS5 of the Shropshire Local Development Framework Adopted Core Strategy, and Policies MD1, MD3, MD7a and S5 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 enlarge an existing domestic garage block associated with Hysbatch Cottage (by means of extending its footprint southwards, raising the eaves and ridgeline and installing dormer windows), and to convert it into an independent, 1½-storey open-market dwelling. It follows the recent refusal, by officers under delegated authority, of similar application No. 18/05656/FUL, for the following reason:

The existing building has no historic or architectural value which would justify its retention and reuse as an open-market dwelling. In any event the extent of the proposed enlargement is such that the scheme would be tantamount to erecting an entirely new structure which, in this countryside location outside any settlement designated for residential development, would directly conflict with the Council's housing strategy and would not represent sustainable development in the round. Whilst there may be some social and economic benefits these would be negligible, and neither would the absence of more severe landscape, flood risk or other impacts offset the fundamental conflict with Policies CS1, CS3, CS4 and CS5 of the Shropshire Local Development Framework Adopted Core Strategy, and Policies MD1, MD3, MD7a and S5 of the Shropshire Council Site Allocations and Management of Development Plan.

1.2

The current application differs only in that:

- the dwelling would now feature facing brickwork up to sill height (the upper walls would still be timber-clad, as before), and solar panels on its rear roof slope; and
- a revised Design and Access Statement (DAS) presents some expanded/ additional arguments in support of the scheme.

- 1.3 Although an unfettered dwelling is proposed, the DAS says the specific intention is for it to house the applicant and his wife, allowing them to be on hand to assist their father/father-in-law who would remain living in the existing cottage.

2.0 SITE LOCATION/DESCRIPTION

2.1 Ticklerton is a small village 2½ miles southeast of Church Stretton in the Shropshire Hills Area of Outstanding Natural Beauty (AONB). The site comprises the rear portion of and entrance to the curtilage of Hysbatch Cottage, a traditional half-dormered stone-built property set in a hollow on the eastern fringes of the settlement, alongside a minor road towards Eaton. The garage stands in the northwest corner, siding a garden area which would be retained by the cottage. Built in the late 20th Century it is presumably of blockwork construction behind its synthetic stone cladding, and has a half-hipped plain tiled roof containing a storeroom. The property is surrounded by open fields, the closest neighbouring dwellings being two semi-detached pairs of mid-20th Century former Council houses known as 'Woodland View' some 80 metres to the northwest.

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 because:

- the officer recommendation of refusal is contrary to the Parish Council's position of support; and
- Shropshire Council's Local Member has called in the application for committee consideration of the proposal as an exception to policy, given the Parish Council's support and the applicant's family's circumstances.

4.0 COMMUNITY REPRESENTATIONS

4.1 Consultee comments

4.1.1 Eaton-under-Heywood and Hope Bowdler Parish Council – support:

It is disappointing that the previous application was refused. This seems somewhat at odds with a current Shropshire Council survey intended to identify those in need of housing.

Despite Ticklerton being designated as open countryside for planning purposes, and councillors generally seeking to retain this designation, exceptions should be allowed in certain circumstances. This is one such case, as the applicants wish to be on hand to support an elderly relative.

The proposed dwelling would be visually unobtrusive, the vehicular access to the site is already established, and there have been no public objections.

4.1.2 Shropshire Council Ecology – comment:

Conditions should require bat and bird box provision and control external lighting. Informatives should advise on the legal status of bats and nesting birds, and on measures to protect wildlife in general.

4.1.3 Shropshire Council Flood and Water Management – comment:

The site is mapped as being at risk of surface water flooding. The applicant should therefore ensure that the finished floor level is set above any known flood level, or at least 150mm above ground level. Meanwhile an informative should encourage the use of sustainable surface water drainage systems (SuDS).

4.1.4 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. The Partnership also reserves the right to make a further, detailed response.

4.1.5 Shropshire Council Affordable Housing – no objection:

There are no affordable housing obligations associated with this proposal.

4.1.6 Shropshire Council Highways Development Control – comment:

From a highway safety perspective the development is likely to be acceptable in principle. However the following points should be addressed:

- Whilst there is likely to be sufficient space for vehicle parking and turning in connection with both dwellings, details should be sought.
- The first five-metre stretch of the access should be metalled in order to prevent loose material becoming displaced onto the road.
- The junction width and radii should be sufficient to allow entering and exiting vehicles to pass without obstructing the road.
- Although the access is established, visibility to the right (southeast) is of concern. Splays appropriate to the road conditions and the proposed intensification of the junction's use should be provided.

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

4.2 **Public comments**

4.2.1 None

5.0 **THE MAIN ISSUES**

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

6.0 **OFFICER APPRAISAL**

6.1 **Principle of development**

6.1.1 A key objective of both national and local planning policy is to concentrate residential development in locations which promote economic, social and environmental sustainability. Specifically the Council's Core Strategy Policies CS1, CS3, CS4 and CS5 seek to achieve managed, targeted growth by steering new-build open-market housing to sites within market towns, other 'key centres' and certain named villages ('Community Hubs and Clusters') as identified in the relatively recent Site Allocations and Management of Development (SAMDev) Plan. Sporadic development in open countryside (i.e. outside the designated settlements) is generally unacceptable unless there are exceptional circumstances (typically those outlined in Core Strategy Policy

CS5 and SAMDev Policy MD7a, such as a specific and demonstrable need for an 'affordable' home for qualifying local people, or to house an agricultural worker at his place of work), or unless other material considerations are held to outweigh the statutory priority which must be afforded to the local development plan.

6.1.2 Ticklerton is a small village with few services and facilities. It is not designated for new housing under SAMDev Policies MD1 and S5, and consequently is classed as countryside for planning purposes. Although Core Strategy Policy CS5 does allow the sympathetic conversion of appropriate existing rural buildings, it gives priority to small-scale economic/employment-generating development, affordable housing and "other uses appropriate to a countryside location", before continuing: "open market residential conversions will only be considered where respect for the heritage asset... and high standards of sustainability are achieved". It therefore implies that only buildings which qualify as heritage assets will be considered suitable for use as unfettered dwellings, and this is confirmed by SAMDev Policy MD7a.

6.1.3 The National Planning Policy Framework (NPPF) defines heritage assets as buildings, monuments, sites, places, areas or landscapes identified as having a degree of significance meriting consideration in planning decisions because of their heritage interest, including both assets designated by statute, and non-designated assets as may be identified by the local planning authority. The Council's Supplementary Planning Document (SPD) on the Type and Affordability of Housing elaborates, explaining that heritage assets normally predate 1950, exhibit traditional materials and building methods, are of permanent and substantial construction and local significance, and add value to the landscape. It is on account of such qualities that a heritage asset might be considered worthy of retention and reuse even as an open market dwelling, whereas a building of little or no historic value might be suitable only for a more limited range of alternative uses offering greater social or economic benefits, or else none at all.

6.1.4 In this case the garage block cannot be regarded as a heritage asset given its modernity (it was approved in 1988 under planning application No. SS/1988/274/P/), non-traditional construction and limited architectural merit. In any event the need for substantial enlargement in order for it to function as a family home means the development would actually be tantamount to a new-build dwelling. The fact that this would be an unfettered property saleable on the open market means officers give very little weight to the family circumstances recounted in the DAS, which in any event are not particularly persuasive because:

- there is no evidence that the applicant's father-in-law currently requires day-to-day assistance on healthcare grounds (on the contrary it is stated that the existing cottage and its garden are still manageable for him at present);
- any such needs would be relatively short-term; and
- other arrangements may potentially be available.

Thus the proposal fundamentally conflicts with the aforementioned policies, and moreover this could not simply be overcome by imposing a condition or legal agreement restricting occupancy without any sound planning justification.

6.1.5 The DAS implies that Policies CS5 and MD7a merely provide examples of special circumstances in which new housing might be permissible outside designated

settlements, rather than an exhaustive list. Certainly, however, they do not expressly support unfettered residential development in the countryside, instead stating that it should be “strictly controlled”. SAMDev Policy MD3, meanwhile, does give 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 in particular to the likelihood of first meeting the housing guidelines within the designated settlements. At this juncture, with seven years of the current Plan period left to run, applications for two large housing schemes in Church Stretton already submitted and one of them approved, and the Council’s ‘Five Year Housing Land Supply Statement’ confirming a more-than-sufficient supply of deliverable housing land overall, there is no pressing need to allow further open-market development elsewhere, despite the applicant claiming that the local housing guidelines at least are unachievable. Indeed the Council’s position on this issue is supported by recent appeal decisions.

6.1.6 Regarding other points in the Design and Access Statement (DAS):

- Before being adopted, both the SAMDev Plan and Core Strategy were declared sound by a Secretary of State inspector. This included the Council’s expectations for rural housing delivery, which were considered appropriate and achievable, and the methodology for identifying Hub and Cluster settlements. Although no such designations were made in the Church Stretton area, not all parts of the county must necessarily receive identical proportions of new housing in order to achieve sustainable development and a ‘rural rebalance’.
- There is recent case law on the issue of whether or not there is a freestanding presumption in favour of sustainable development under the 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.”
- The DAS references a number of successful applications (some of them approved on appeal) for new dwellings in other countryside locations in Shropshire. However these are not considered directly comparable as the majority relate to villages closer to Church Stretton and with more facilities of their own, others to agricultural worker’s dwellings or straight conversions of existing buildings, and one in fact to a site *within* a Cluster settlement (application No. 18/04485/OUT at Weston Lullingfields). Most also predate the above case law on the NPPF presumption in favour of sustainable development.
- Although Core Strategy Policy CS10 seeks to prioritise redevelopment of brownfield land, this must be “on suitable sites in sustainable locations”. Similarly, whilst the NPPF definition of ‘previously developed land’ includes the curtilage of developed land, this is qualified by the statement: “it should not be assumed that

the whole of the curtilage should be developed”. Moreover residential gardens, in urban areas at least, are specifically *excluded*. In this case the garage is not redundant, and in any event officers maintain that redevelopment of brownfield sites should still generally reflect both the overarching ambitions of the NPPF and the Council’s adopted housing strategy by avoiding sporadic new homes in the countryside.

- The applicant claims that the Council is currently well below its aim of achieving 60% of development on brownfield land, and that this weighs in the proposal’s favour. However approving this application for just one house would make little difference, and again this argument ignores other, more fundamental policy requirements.
- The applicant argues that a current review of the Local Plan will only increase the requirements for new housing and redeveloping brownfield sites. However this review currently attracts very little weight as it is at an early stage, with formal adoption of any changes still subject to consideration of outstanding objections and examination by a Secretary of State inspector. In any event the Parish Council does not appear to have nominated Ticklerton as a future Hub or Cluster settlement as part of the review process.
- It is mentioned that the proposed dwelling would be a self-build project, but again this does not override all other policy considerations and objectives. The NPPF is clear that such schemes must be considered within the overall context of strategic housing policies, whilst a recent appeal decision on a proposed dwelling in another undesignated Shropshire settlement emphasised that self-build legislation is not a *carte blanche* for development in otherwise unsuitable locations. It is also worth noting that this appeal decision found no evidence of the Council failing its duty to facilitate self-building.
- Officers acknowledge that the proposal would deliver some benefits, for example by helping to boost the local supply of housing, and possibly supporting local contractors during the construction period and/or increasing patronage of services and facilities in neighbouring villages longer-term. Again, however, the impacts of a single dwelling in these respects would be very modest, and in fact it seems more likely that occupiers would rely heavily on travel by private car in order to work, shop and meet other day-to-day needs in larger settlements (Church Stretton included).
- The lack of more significant landscape, flooding or other impacts (see following sections) are at best neutral factors rather than positive benefits sufficient to offset the wider harm the scheme could cause by undermining the Council’s adopted housing strategy.

6.1.7 Given the above officers still consider that the proposal fails to represent sustainable development in the round, and is unacceptable in principle.

6.2 Affordable housing contribution

6.2.1 Core Strategy Policy CS11 and the aforementioned SPD require all market housing schemes to make an affordable housing contribution (usually a one-off payment in lieu of on-site provision where a small number of dwellings is proposed). However this requirement is now effectively superseded by the revised NPPF, 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, meaning no affordable housing contribution would be required here.

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

6.3.1 As with the previous application, the scheme is acceptable in that the dwelling's simple, low, linear form would reflect the vernacular tradition reasonably well, whilst the weatherboarded finish would give a more rustic quality than the current synthetic stone, plus a degree of subservience to the original cottage. Furthermore the separation from the latter would avoid a cramped appearance, and the lack of a highway frontage would not be particularly unusual in this area. However the design is hardly so exceptional as to justify in itself a new dwelling in the countryside, and the same applies to the current plans' inclusion of solar panels.

6.3.2 It is also accepted that the development would not impact unduly on the open character or scenic beauty of the wider landscape, given the presence of the existing building, its position within an established domestic plot, and the relatively low-lying and hence secluded location. Again, however, and as explained above, this does not offset the scheme's fundamental conflict with the countryside designation.

6.4 **Residential amenity**

6.4.1 The separation from Hysbatch Cottage would also be acceptable having regard to privacy and outlook, especially if the two homes were initially occupied by members of the same family, as envisaged. Both would have sufficient outdoor amenity space, and moreover there would be little impact on the Woodland View properties given the distance and topography in-between.

6.5 **Access and highway safety**

6.5.1 Regarding the Highways Development Control Team's comments, precise details of the access layout and surfacing, and also of parking and turning provision, could be secured by condition. There is limited scope to improve the south-easterly visibility splay as the adjacent land there is outside the applicant's control. However this was not raised as a particular concern under the previous application, the road is lightly trafficked, and the Highways officer still does not formally object.

6.6 **Flood risk and drainage**

6.6.1 The site's risk of pluvial flooding could be said to add to the proposal's unacceptability, since the 'sequential' and 'exception' tests in the NPPF generally seek to avoid development in areas of higher risk. On balance, however, this is not recommended as a secondary refusal reason on the basis that the development is, at least in part, a conversion scheme to which those tests do not apply. Furthermore the original DAS outlined mitigation measures which, along with full drainage details, could be secured by condition, and subject to this the Flood and Water Management Team does not object.

6.7 **Ecology**

6.7.1 The Ecology Team accepts that sufficient ecological mitigation and enhancements could be secured through conditions. However, controlling external lighting in that way may be unreasonable given that the site is part of an established domestic curtilage where no such restriction currently applies.

7.0 CONCLUSION

7.1 The existing building has no historic or architectural value which would justify its retention and reuse as an open-market dwelling. In any event the extent of the proposed enlargement is such that the scheme would be tantamount to erecting an entirely new dwelling which, in this countryside location outside any settlement designated for residential development, would directly conflict with the Council's adopted housing strategy and would not represent sustainable development in the round. Although there may be some social and economic benefits these would be negligible, no significant weight can be given to the applicant's family circumstances, whilst the absence of more severe landscape, flood risk or other impacts does not offset the fundamental conflict with the relevant planning policies. It is therefore 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
- CS3 - The Market Towns and Other Key Centres
- 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
- S5 - Church Stretton Area Settlement Policy

Supplementary Planning Documents:

Type and Affordability of Housing

Relevant Planning History:

SS/1988/274/P/ – Erection of detached private garage and store (permitted May 1988)

18/05656/FUL – Conversion and extension of domestic garage to form separate dwelling (refused May 2019)

11.0 ADDITIONAL INFORMATION

View details online:

<https://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=details&keyVal=PXDE2MTDHLPO0>

List of Background Papers:
Application documents available on Council website
Cabinet Member (Portfolio Holder):
Cllr Gwilym. Butler
Local Member:
Cllr Cecilia Motley
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 providing detailed pre-application advice as well as further discussing the relevant planning policy considerations during the course of both this and a previous, similar application. Fundamentally, however, the proposal is contrary to policy for the reason set out above, and hence it has not been possible to reach an agreed solution in this instance.