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## Appeal Decision

Site visit made on 13 January 2021

**by Thomas Hatfield BA (Hons) MA MRTPI**

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

**Decision date: 10<sup>th</sup> February 2021**

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**Appeal Ref: APP/L3245/W/20/3259915**

**Crimond, 85 Ludlow Road, Church Stretton, SY6 6RA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Ben Gardiner against the decision of Shropshire Council.
- The application Ref 20/01847/FUL, dated 11 May 2020, was approved on 29 July 2020 and planning permission was granted subject to conditions.
- The development permitted is erection of replacement dwelling and alterations, including erection of detached annex and construction of garden bridge.
- The conditions in dispute are Nos 5-11 which state that:
  - (5) *Following demolition of the existing dwelling, no ground works shall take place until a scheme of surface and foul water drainage has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented before the development is occupied/brought into use (whichever is the sooner).*
  - (6) *Prior to their erection, precise details of the proposed roof mounted solar array, including their dimensions, form and appearance / finish shall be submitted to and approved in writing by the local planning authority, whilst within three months following the cessation of their use, the solar panels and any associated equipment shall be removed and the roof reinstated to its former condition.*
  - (7) *Following demolition of the existing dwelling, no above ground works shall commence until there has been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping, which shall include:*
    - *A survey of all existing trees and / or hedgerows on the site and along its boundaries*
    - *Identification and measures for the protection of existing trees and hedgerows which are to be retained*
    - *Details/schedules of proposed planting*
    - *Full details of the alignment, height and construction of any walls, fences, retaining structures or other boundary treatments/means of enclosure*
    - *Details/samples of hard surfacing materials*
    - *Timetables for implementation**The landscaping works shall be completed in accordance with the approved details. Thereafter all fences, walls, hardstandings and other hard landscaping features shall be retained in accordance with the approved details, whilst any trees or plants which, within a period of five years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.*
  - (8) *Prior to the construction of any new retaining walls that are required to accommodate the replacement dwellings, details of their positioning, construction and appearance, together with any associated land regrading works, shall be submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.*
  - (9) *The development hereby approved shall provide ecological enhancements in the form of at least one bat box and at least one bird box in a suitable location on the*

*development site before the development is brought into use and shall be retained for the lifetime of the development.*

*(10) The annex accommodation hereby permitted shall only be used as additional residential accommodation in association with the dwelling on the site known as 85 Ludlow Road and no part of the building/s shall be sold or let separately or otherwise severed to form a separate, independent dwelling unit or commercial enterprise.*

*(11) 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), the following development shall not be undertaken without express planning permission first being obtained from the Local Planning Authority:-*

- Extensions;*
- Additions or alterations to the roof, including dormer windows and rooflights;*
- Erection of porches and outbuildings*

- The reasons given for the conditions are:

*(5) To ensure satisfactory drainage of the site and to avoid flooding.*

*(6) In the interests of visual amenity.*

*(7) To ensure that the external appearance of the development is satisfactory and help ensure a reasonable standard of residential amenity.*

*(8) To ensure that the retaining walls are adequate for their intended purpose and in the interests of the visual amenities of the area.*

*(9) To ensure the provision of roosting opportunities for bats and nesting opportunities for wild birds.*

*(10) To define the permission for the avoidance of doubt. The application seeks to incorporate the residential use into the existing dwelling only and does not seek permission for a new dwelling or holiday accommodation which could give rise to different planning implications requiring further assessment by the Local Planning Authority.*

*(11) To maintain the scale, appearance and character of the development and to safeguard visual and residential amenity.*

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## **Decision**

1. The appeal is allowed and planning permission Ref 20/01847/FUL for erection of replacement dwelling and alterations, including erection of detached annex and construction of garden bridge at Crimond, 85 Ludlow Road, Church Stretton, SY6 6RA granted on 29 July 2020 by Shropshire Council, is varied by deleting conditions 5, 6, 7, and 11 and substituting for them the conditions set out in the attached schedule.

## **Procedural Matter**

2. It is asserted that as the Council failed to determine the application within the statutory timescales, the conditions attached to permission Ref 20/01847/FUL are therefore void. However, that is not the case, and the approval of the application beyond those timescales did not invalidate the conditions.

## **Main Issue**

3. The main issue is whether the disputed conditions are reasonable and necessary in order to make the development acceptable in planning terms.

## Reasons

### *Condition 5 - scheme of surface and foul water drainage*

4. Policy CS18 of the Shropshire Core Strategy (2011) states that all developments, including changes to existing buildings, shall include appropriate sustainable drainage systems to manage surface water. It further states that development must not result in an increase in runoff.
5. In combination, the approved replacement dwelling and detached annex would have a significantly larger built footprint than the pre-existing property. This is likely to result in an increase in runoff, contrary to Policy CS18. The Council also states that the site is in area at risk of surface water flooding, which has not been disputed. In these circumstances, a condition requiring a scheme of surface water drainage to be submitted and approved is both reasonable and necessary in order to comply with Policy CS18, and to ensure that satisfactory drainage arrangements are provided that do not increase flood risk elsewhere.
6. However, as the site already benefits from a foul drainage connection it is unnecessary for this matter to be subject to a condition. In addition, the requirement that drainage details be submitted and approved only once demolition has taken place, but before ground works have commenced, is unduly onerous in my view. Accordingly, I have altered the wording of this condition to allow these details to be provided prior to the construction of the replacement dwelling and associated annexes above slab level.

### *Condition 6 - details of the proposed roof mounted solar array*

7. Condition 6 refers to a "proposed roof mounted solar array" and requires that this be removed within three months following the cessation of its use. However, the submitted plans clearly indicate that an integral solar roof is proposed, rather than a mounted array. I further note that condition 4 requires the submission and approval of samples/precise details of all external materials and their colour/finishes. That would include details of the integral solar roof. Condition 6 is therefore unnecessary, and I have removed it.

### *Condition 7 - scheme of landscaping*

8. The approved replacement dwelling would be served by the garden area to the pre-existing property. Given that this is an existing arrangement, it would be disproportionate to require a full landscaping scheme covering the entire garden in my view. However, the front boundary of the appeal site currently consists of an attractive hedgerow that contributes to the character and appearance of the surrounding area, which is within the Shropshire Hills Area of Outstanding Natural Beauty. I also note that the approved dwelling contains a number of side-facing windows that would look out towards No 87 at first floor level. At present, existing boundary planting provides a degree of screening that would assist in preserving the privacy of that property. In my view, this boundary planting should either be retained or replaced. I have therefore amended the wording of condition 7 so that it relates solely to planting along the boundaries.

*Condition 8 - retaining walls*

9. Condition 8 relates to the proposed realignment of the retaining walls at the rear of the site. This realignment and the regrading of land in this area are shown on the approved plans and are necessary in order to accommodate the approved replacement dwelling and the detached annex. They therefore form part of the proposal before me regardless of whether the wall itself constitutes permitted development. In any case, these works appear to comprise a separate engineering operation of substance, and there is no Lawful Development Certificate before me to confirm that they would be permitted development. Land instability is a planning issue, and so whether the retaining wall is adequate for its intended purpose is clearly relevant to planning.
10. In my view, this condition is reasonable and necessary in order to ensure that the new dwelling is not put at unacceptable risk from, or adversely affected by, land instability. At the time of my site visit, the new retaining wall appeared to have been constructed, and so this condition may be in breach. However, that would be a separate matter between the appellant and the Council.

*Condition 9 - ecological enhancements*

11. Condition 9 requires the installation of at least 1 bat box and 1 bird box, as recommended by the Outline Ecological Impact Assessment (Eco Tech, April 2020). This condition further requires that these features be retained for the lifetime of the development, which is contested by the appellant. However, planning permission runs with the land rather than with the applicant or appellant, and should the property change hands the responsibility for retaining these features would pass to the new owner or occupier.
12. I consider that this condition is both reasonable and necessary in order to secure appropriate ecological enhancements to this site. I therefore see no reason to vary or remove it.

*Condition 10 - annex accommodation*

13. The development proposes 2 self-contained annexes, one of which would be integral to the main dwelling, and the other of which would be detached and positioned in the rear garden area. Both of these annexes would contain a dedicated kitchen and bathroom and so could in theory be occupied as separate units of accommodation. Given the layout of the proposal, including the position of habitable room windows and the garden areas, the separate occupancy of either annex would be likely to result in a significant loss of privacy. Accordingly, it is necessary to control the occupancy of the annexes by condition. The current wording would not prohibit the use of the annexes for purposes ancillary to the residential use of the dwelling, such as home working, and I therefore see no reason to remove or vary this condition.

*Condition 11 - permitted development rights*

14. Condition 11 removes a number of permitted development rights from the approved dwelling, including those relating to extensions, additions or alterations to the roof, porches, and outbuildings. With regard to extensions, permitted development rights could be used to add significantly to both the side and rear of the approved dwelling. Such extensions would be likely to unbalance the appearance of the property, which would be harmful to the character and appearance of the area. Moreover, a rear extension under

permitted development rights could significantly reduce the size of the back garden, to the detriment of the living conditions of its occupiers. I therefore consider that removing these permitted rights is both reasonable and necessary in this case.

15. With regard to additions to the roof, the approved dwelling would have a gable frontage and so any dormers constructed under permitted development rights would be side facing. Such additions would be likely to harmfully alter the appearance of the building and could result in a perception of overlooking to neighbouring occupiers. Accordingly, I consider it necessary to remove these permitted rights. However, other alterations to the roof, including rooflights, would not alter the appearance of the building to the same extent. I have therefore varied the wording to this condition to remove reference to these.
16. Separately, a large outbuilding could be constructed to the side and/or rear of the approved dwelling under permitted development rights. This could significantly reduce the rear garden space available to the host property, to the detriment of its occupiers. I therefore consider it necessary to remove permitted development rights in this regard. However, permitted development rights relating to porches are far more modest, and their use would be unlikely to significantly alter the appearance of the approved dwelling. Accordingly, I do not consider it necessary to remove these permitted rights, and I have varied the wording of the condition to reflect this approach.

### **Other Matters**

17. This decision does not create a new and separate planning permission and it is therefore unnecessary to re-impose the other conditions attached to permission Ref 20/01847/FUL. In this regard, the original decision and this appeal decision should be read together.
18. The concerns expressed regarding the Council's conduct during the processing of the planning application fall outside of the remit of this decision.

### **Conclusion**

19. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting some of the disputed conditions and substituting others.

*Thomas Hatfield*

INSPECTOR

### **Schedule of Conditions**

- 1) Prior to the construction of the replacement dwelling and associated annexes above slab level, a surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the first occupation of the replacement dwelling.
- 2) Prior to the construction of the replacement dwelling and associated annexes above slab level, details of boundary planting shall be submitted to and approved in writing by the Local Planning Authority. The submitted details shall:
  - identify existing trees and hedges along the boundaries that are to be retained
  - identify measures to protect the retained trees and hedges during the construction process
  - provide details of any replacement boundary planting
  - provide a timetable for the implementation of any replacement boundary planting and the installation of protection measures

Any replacement boundary planting and/or protection measures shall be completed in accordance with the approved details and timetable. Any retained trees and hedges or replacement planting which, within a period of five 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.

- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions, additions to the roof, or outbuildings, as permitted by Classes A, B, and E of Part 1 of Schedule 2 of that Order, shall be erected other than those expressly authorised by this permission.