

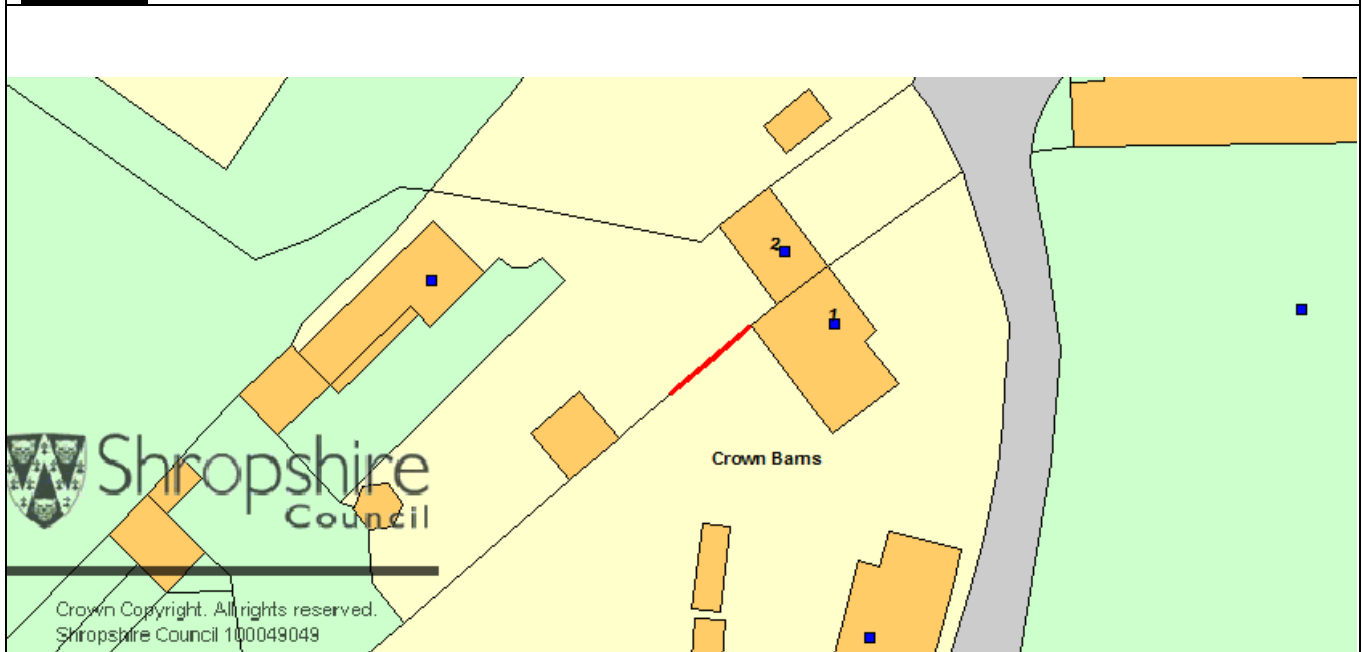
Development Management Report

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

Summary of Application

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

Grid Ref: 363760 - 276192



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

Recommended Reason for refusal

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

REPORT

1.0 THE PROPOSAL

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

2.0 SITE LOCATION/DESCRIPTION

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

3.0 REASON FOR COMMITTEE/DELEGATED DETERMINATION OF APPLICATION

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

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

Hopton Wafers Parish Council
Support

- Public Comments

One public representation was received;

Mrs Julie Thatcher - Neutral

Our view on the application of a high boundary fence

-3.3 is too high

-2.9 is acceptable

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

-No thought into characteristics to properties

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

-Following existing line being angled and tiered

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

5.0 THE MAIN ISSUES

Principle of development

Siting Scale and Design

Neighbour Amenity

Other Issues

6.0 OFFICER APPRAISAL

6.1 Principle of Development

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

6.2 Siting, Scale and Design

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

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

6.3 Neighbour Amenity

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

6.4 Other Matters

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

7.0 CONCLUSION

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

8.0 Risk Assessment and Opportunities Appraisal

8.1 Risk Management

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

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

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

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

8.2 Human Rights

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

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

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

8.3 Equalities

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

9.0 Financial Implications

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

10. Background

Relevant Planning Policies

Central Government Guidance:

West Midlands Regional Spatial Strategy Policies:

Core Strategy and Saved Policies:

RELEVANT PLANNING HISTORY:

20/04929/FUL Application under Section 73A of the Town and Country Planning Act 1990 for the retrospective erection of 3.3m high boundary fence PDE

SS/1979/692/O/ Conversion of existing barn into a dwellinghouse. REFUSE 8th February 1980

SS/1/01/11842/F Conversion of barns to 2 x dwellings and alteration to vehicular access. PERCON 9th March 2001

SS/1/00/11600/F Conversion of barn to 2no. dwellings & alteration to (existing) vehicular access.

WDN 23rd October 2000

SS/1/06/18095/F Erection of workshop; garage; stables & barn; new vehicular access & change of use of land from agricultural to domestic curtilage PERCON 25th May 2006

SS/1/99/010041/F Conversion of barn to 2 No. residential units.

REFUSE 21st October 1999

SS/1/06/18999/F Erection of extension to dwelling PERCON 16th January 2007

PREAPP/10/01136 Extension to barn PRRQD 6th May 2010

10/01955/FUL Erection of a two storey side extension to dwelling GRANT 2nd July 2010

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SS/1/99/010041/F Conversion of barn to 2 No. residential units.

REFUSE 21st October 1999

SS/1/06/18999/F Erection of extension to dwelling PERCON 16th January 2007

11. Additional Information

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

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Cabinet Member (Portfolio Holder)
Councillor Ed Potter

Local Member

Cllr Gwilym Butler

Cllr Simon Harris

Appendices

APPENDIX 1 - Informatives

APPENDIX 1

Informatives

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

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