

AGENDA ITEM



Committee and date


Development Management Report

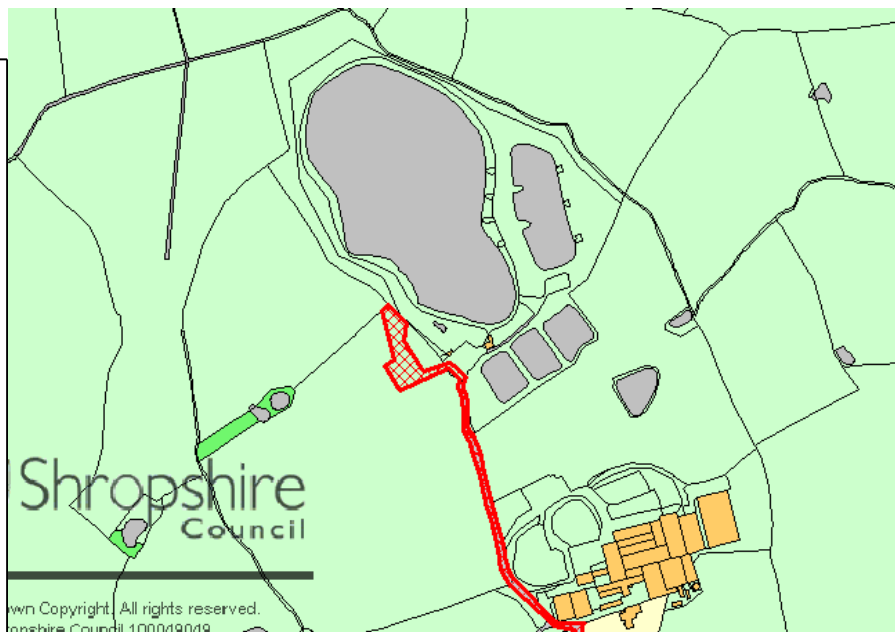
Responsible Officer: Tracy Darke, Assistant Director of Economy & Place

Summary of Application

Application Number: 21/05888/FUL	Parish:	Baschurch
Proposal: Erection of an essential workers dwelling including parking and amenity space		
Site Address: Proposed Essential Workers Dwelling North Of Merrington Bomere Heath Shropshire		
Applicant: Merrington Carp Fishery		
Case Officer: Mark Perry	email	: mark.perry@shropshire.gov.uk

Grid Ref: 345697 - 321452

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Recommendation:- Refuse for the following reason:

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It is considered that the applicant has failed to provide a sufficiently robust case to demonstrate that there is an essential need for a dwelling on the site to allow the proper functioning of the enterprise. It is considered, on the basis of the evidence provided that there is not a need for the occupier to be present at the business for the majority of the time ("time" being 24 hours a day, 7 days a week). Additionally the financial details submitted have not been independently verified. As such the proposal conflicts with policies CS5 of the Core Strategy, MD7a of SAMDev, the Type and Affordability of Housing SPD and paragraph 80 of the NPPF.

REPORT

1.0 THE PROPOSAL

- 1.1 The application submitted seeks full planning permission for the erection of an essential workers dwelling along with the creation of associated parking and amenity space. The proposed dwelling would take the form of a 3 bed timber lodge style dwelling and the applicant has confirmed that they would be willing to accept a temporary consent if members are minded to approved the application.
- 1.2 The applicant has had pre-application discussions with Officers where it was concluded that a proposal could obtain Officer support but only where an essential and functional need can be demonstrated.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 The site is located in the area of open countryside northwest of Bomere Heath and northeast of Walford Heath. The site comprises of a series of 3 large lakes with the newest lake having been granted planning permission in September 2020 and becoming operational in November 2021. The fishery was established in 2006 and has continued to expand. The applicant advises that fishermen are attracted to the fishery from around the country and occasionally abroad.
- 2.2 The three lakes measure 8 acres, 1.25 acre and 6.2 acres in area. In addition, there are a number of small nursery and stocking pools. In total the 3 lakes provide 28 pegs and contain some 500 caps weighing up to 40lbs. The average weight of the carp is around 25 lbs. The applicant advises that a sizable proportion of the carp have a value of £20,000 each.
- 2.3 The fishery operates year-round with fishermen typically having a 2 or 3 day pass and sleep on site in tents at the lake.
- 2.4 The business is managed by the applicant and her husband who are currently residing at the fishery in an un-lawfully sited static caravan having relocated to the fishery in early 2021.
- 2.5 The applicant does not own any of the land associated with this fishing enterprise. The land is in separate ownership by the occupiers of The Hayes Farm which is a short distance to the south of the fishing lakes. The applicant has secured a 10 year tenancy of the lakes and their surrounding land. This has

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provided the business with some security that will allow them to continue developing the enterprise. The applicant advises that it is the intention that the tenancy will be renewed in perpetuity.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

3.1 The application was called to committee by the Local Member within 21 days for material planning reasons in accordance with the adopted scheme of delegation.

4.0 Community Representations

Consultee Comment

4.1 Parish Council- Support

Baschurch Parish Council overall support the application for the temporary development of the dwelling at the Merrington Fishery for the reasons stipulated. In particular it must always be linked to the business and we would wish for the situation to be reviewed in 2 years time. We do not support development per se in open countryside, this particular application is one that we can support on the basis of the narrative and intention to support and maintain the business. Therefore our further comment is that this is not an affordable home, rather one that is linked to agriculture and a corresponding 106 agreement to be in place.

4.2 **Highways-** No objection

4.3 **Affordable Housing-** Rural workers dwellings are noted as an exception in the SPD Type and Affordability of Housing from the need to contribute to the provision of affordable housing as per Policy CS11 of the Core Strategy. This is on the proviso that such dwellings are legally tied to a S106 Agreement which requires that the dwelling will default to affordable housing if no longer required for a rural workers dwelling. The usual size of a property of this type is 100sqm for consistency with the maximum size allowed for a single plot affordable exception site.

4.4 **Drainage-** The provisions of the Planning Practice Guidance, Flood Risk and Coastal Change, should be followed. Preference should be given to drainage measures which allow rainwater to soakaway naturally. Soakaways should be designed in accordance with BRE Digest 365. Connection of new surface water drainage systems to existing drains / sewers should only be undertaken as a last resort, if it can be demonstrated that infiltration techniques are not achievable.

4.5 **Ecology-** There are no specific ecology measures triggered by this application, and we are satisfied with the findings and conclusions in the Ecological Impact Assessment conducted by Churton Ecology in October 2021. Ecology Standing Advice can be applied; the lighting mitigation and habitat enhancement measures specified in the Ecological Impact Assessment are appropriate and should be adopted as part of the application.

Public Comments

No representations received at time of writing report.

5.0 THE MAIN ISSUES

Principle of development
Functional Need
Financial Viability
Siting, scale and design of structure
Visual impact and landscaping
Ecology

6.0 OFFICER APPRAISAL

6.1 Principle of development

- 6.1.1 Under Section 38(6) of the Planning and Compulsory Purchase Act 2004, all planning applications must be determined in accordance with the adopted development plan, unless material considerations indicate otherwise. Since the adoption of the Shropshire Core Strategy (March 2011) the National Planning Policy Framework (NPPF) has been published and is a material planning consideration, which is given significant weight in any determination process.
- 6.1.2 Paragraph 11 of the NPPF states that for decision making, this means;
- “...approving development proposals that accord with the development plan without delay; or where there are no development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework taken as a whole.”
- 6.1.3 The NPPF indicates that in order to promote sustainable development in rural areas development should be located where it will enhance or maintain the vitality of rural communities. Specifically, new isolated development should be avoided, unless there are special circumstances to include the provision of an essential need for a rural worker to live permanently at or near their place of work in the countryside (para 80), being determined on an individual objective basis. In those situations where isolated dwellings are unavoidable, applications will be required to demonstrate that a dwelling at the enterprise is essential by showing a functional need for the occupier to be present on-site for the majority of the time.
- 6.1.4 The Local Development Framework (LDF) for Shropshire consists of both the Core Strategy (CS) and the Site Allocations and Management of Development Plan (the SAMDev). Both of these Development Plan Documents recognise the importance to both maintaining and enhancing the countryside's vitality and characters, subsequently only supporting those proposals for new development that improve the sustainability of the rural communities, by bringing local economic and community benefits – of which accommodation for essential countryside workers is permissible
- 6.1.5 The Type and Affordability of Housing Supplementary Planning Document (SPD) provides a comprehensive approach, which is well tested through the former

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Annexe A of PPS7, setting out clear guidelines for application. In full recognition of farming (and rural) enterprises changing over time, the SPD supports the granting of occupational dwellings, on the provision that careful assessment has been afforded to prevent abuse of the planning system. This assessment must be fair and based solely on an accurate assessment of the individual needs of the enterprise. Applicants will be required to demonstrate that a dwelling at the enterprise is essential by a showing a functional need for the occupier to be present on site for the majority of the time ("time" being 24 hours a day, 7 days a week).

6.2 Essential Need

6.2.1 In addition to the submitted Design and Access Statement the applicant has also provided a supporting statement from Reading Agricultural Consultants which sets out the justification for requiring a permanent residential presence on the site in order to manage the fishery enterprise.

6.2.2 The applicant has claimed that there is a need for a dwelling on the site to serve the existing business with the main justification being for the following aspects of the business:

- monitoring and feeding the growing fish requiring supplementary feed during periods of cold weather
- close monitoring and recording the health of the fish and taking prompt action if any health concerns are identified
- close monitoring of water quality with regular daily checks on the lakes to ensure it meets with the correct levels of oxygen and there are no contaminants
- thinning out of stock from the pools
- preventing predation by cormorants and herons
- security of the site
- welfare and safety of anglers

6.2.3 Neither national nor local planning policy prescribes any criteria against which the essential need for a rural worker to live permanently at or near their place of work in the countryside should be assessed. Despite this it remains necessary for the Planning Authority to establish whether an essential need can be demonstrated and whether it is essential, for the proper running of the enterprise, for a worker to live on the site and be readily available for the majority of the time. ("time" being 24 hours a day, 7 days a week). The unit and activity concerned should also have been established for at least 3 years, profitable, financially sound and with the prospect to remain so.

6.2.4 In addition, it is necessary to establish whether the functional need could not be met by any other available and suitable accommodation in the area.

6.3 Monitoring and Feeding

6.3.1 It is recognised that there is a need for the stock to be checked at various times in order to ensure the health of the fish. However, this is not considered that this needs to be constant supervision and that any inspections could be incorporated into a normal pattern of work or shift patterns. No information has been provided to demonstrate that inspections would need to take place through the night.

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Likewise the applicant refers to the feeding of the fish and how some of the older fish stocks require supplementary feed during cold weather, which can occur outside of normal hours. No evidence has been provided as to the frequency that this occurs or why any additional feeds cannot be planned by careful monitoring of weather forecasts etc. Even if it is necessary on occasions to make feeds outside of normal working hours it would appear from the evidence submitted that this is not a frequent occurrence.

- 6.3.2 The appellant has identified the need to monitor oxygen levels in the ponds. The applicant advises that during the high temperatures in July 2021 they experienced an 'oxygen crash' which saw older and larger fish struggle and subsequently the lakes lost a large number of large fish stock. This then caused a spike in ammonia levels which also led to a few younger fish stock dying.
- 6.3.3 The applicant advises in their statement that for several weeks after the warm weather they and their former Fishery Manager were testing the water for oxygen, pH levels and ammonia every three hours throughout the day and night and relied on a tractor running a water pump during the times when there was the most risk (1am to 8am) - to try and get sufficient oxygen into the lake. This is in addition to covering the lake by boat to ensure the removal of any dead fish.
- 6.3.4 There are no details in the application to suggest that such monitoring could not be undertaken by remote technology or that it could not be undertaken as part of the routine operations of the fishery. From the information provided it is also considered that the likelihood of an oxygen crash is not a frequent occurrence and that should it occur it is only for a short period of time which could be managed by a change to work patterns should hot weather be forecast.
- 6.3.5 The submitted Design and Access Statement states that the applicant requests that all carp caught are examined and their health recorded by a member of staff. There is no evidence provided to show that this needs to be done every time a carp is caught including any caught during the night or outside of normal working hours. It is also noted that the 'Fishery Rules' only asks that Fishery Management is contacted when fish over 30 lbs is caught so that they can be photographed and weighed.

6.4 Thinning out of stock

- 6.4.1 It is considered that the management and thinning of the stock would be part and parcel of the general management and duties of the business and not something that needs to be done outside of normal working hours.

6.5 Preventing Predators

- 6.5.1 The applicant has detailed that cormorant predation is a growing national problem at fishing lakes and that the visible presence of human activity seems to scare the birds away and is a natural deterrent. Cormorant attacks are most common through the winter months and occur at a time when the fish are at their slowest and when they should be resting. Following cormorant attacks the applicant advises that they have seen damage and injury to the fish.
- 6.5.2 The applicant advises that the fishermen are on site for 24 hours a day, therefore

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Officers consider that there is already a human presence to deter cormorants. It has not been demonstrated that other options in addition to the 24 hour presence of fishermen, have been considered to deter predators such as bird scarer, netting, wires etc. Alternatively, a worker could undertake patrols to deter predatory birds as part of their varied working hours.

6.6 Security of the site

6.6.1 The applicant raises the issue of the site's security with regards to biosecurity, fish theft and vandalism. Some of the fish stock are 10 to 15 years old and have a value to around £20,000 for a 40lb carp. As such across the site the value of the fish stock is considerable.

6.6.2 The applicant advises that they have installed a new security system which comprises a camera monitoring system although the extent of this and the level of coverage it affords has not been detailed in the submission. It is also noted that the access to the lakes is already protected by security fencing at its entrance. The applicant's consultant advises that these measures would not be dependable given the rural location of the site and that the only effective means of resolving these security matters is through a 24-hour presence. Whilst it is recognised that unlawful entry to the site cannot be eliminated it can be discouraged by the installation of appropriate security measures. In addition, Officers have not been made aware of any previous instances of theft or other security breaches occurring on the site. This would indicate that security is not currently an issue on the site.

6.6.3 It is also noted that as the applicant offers fishing over the full 24 hour period, there will often be fishermen on the site who firstly act as a deterrent to any thief but they would also be able to alert the site's manager by phone if they become aware of unauthorised access or suspicious behaviour.

6.6.4 It is considered that the issue of security would not warrant the presence of a permanent dwelling on the site.

6.7 Financial

6.7.1 The applicant has provided the accounts for the existing business for the 3 years ending 31st March 2020. These do show that the business has generated a profit that has increased year on year after paying wages. However, the financial details have been provided by the applicant and not from a chartered accountant. As such, the accuracy of the details and the profitability of the business cannot be verified.

6.7.2 In addition, the long term future of the fishing enterprise cannot be guaranteed given the applicant currently only has a 10 year lease on the lakes and the surrounding land.

6.8 Visual Impact

6.8.1 The proposed dwelling would be a low timber cabin type structure providing 3 bedrooms. The building is subservient in both its scale and design and would be in keeping with its rural lakeside setting. The building would also be in keeping with the form and character of the other timber buildings that are present. The dwelling would also not be isolated as given its close association with the rest of

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the site. Overall, Officers consider that the scale and design of the building is appropriate and appropriately sited in relation to the enterprise.

6.9 Ecology

6.9.1 The application is accompanied by an Ecological Assessment which has been assessed by the Council's Ecologist. The reports states that the site supports habits of low biodiversity value although bats are considered to be an important feature of the site. The scheme includes acceptable mitigation such as hedgerow planting and installing bat/ bird roosting/nesting features, which overall would result in an increase in the biodiversity value of the site.

6.10 Availability of Alternative Accommodation

The nearest dwelling are those owned by the Landlord (The Hayes), there are four dwellings, however, none of these are available to the applicant. Officer also note that there are no dwellings available for purchase or rent with 1 mile of the site. Broadening the search to 3 miles shows that there are properties on the market for between £200,000 and £250,000. As such it is accepted that the availability of affordable dwellings in the locality is limited.

6.11 Conclusion

6.11.1 Overall, whilst the erection of a dwelling at a rural enterprise would be desirable in this open countryside location and possibly more convenient for the applicant; Officers consider that this is not a reason to support the application. It is considered that the applicant has failed to provide a sufficiently robust case to demonstrate that there is an essential need for a dwelling on the site to allow the proper functioning of the enterprise. It is considered, on the basis of the evidence provided that there is not a need for the occupier to be present at the business for the majority of the time ("time" being 24 hours a day, 7 days a week) and that the reasons given for needing an on-site presence could be dealt with by alternative working arrangements, practices or the provision of additional equipment.

6.11.2 As such the proposal conflicts with policies CS5 of the Core Strategy, MD7a of SAMDev, the Type and Affordability of Housing SPD and paragraph 80 of the NPPF. The application is therefore recommended for refusal.

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

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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

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Relevant Planning Policies

Central Government Guidance:
NPPF

Core Strategy and Saved Policies:

CS5 - Countryside and Greenbelt
CS6 - Sustainable Design and Development Principles
CS11 - Type and Affordability of housing
CS17 - Environmental Networks
MD2 - Sustainable Design
MD7A - Managing Housing Development in the Countryside
MD7A - Managing Housing Development in the
Countryside
MD12 - Natural Environment
SPD0 Type and Affordability of Housing

RELEVANT PLANNING HISTORY:

11. Additional Information

View details online:

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 Nick Bardsley
Appendices APPENDIX 1 - Conditions