

# AGENDA ITEM



Committee and date  
  
14th February 2023

## Development Management Report

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

### Summary of Application

<b>Application Number:</b> 22/05036/FUL	<b>Parish:</b>	Pontesbury
<b>Proposal:</b> Erection of one dwelling		
<b>Site Address:</b> The Waterfall Malehurst Minsterley Shrewsbury Shropshire		
<b>Applicant:</b> MR DAVID MCDONALD		
<b>Case Officer:</b> David Jones	<b>email:</b> david.jones@shropshire.gov.uk	

**Grid Ref:** 338342 - 306436



## **Recommendation:- Refuse**

### **Recommended reason for refusal**

1. The replacement of the caravan with the proposed dwelling is not acceptable in policy terms under SAMDev Policy MD7a and the Type and Affordability of Housing SPD, and the proposal would contravene policies of restraint in the countryside and have a detrimental impact on the rural amenities of the area. The proposal is therefore contrary to Policy CS5, and CS6 of the adopted Core Strategy, SAMDev Policy MD7a, The Type and Affordability of Housing SPD, and the National Planning Policy Framework.

## **REPORT**

### **1.0 THE PROPOSAL**

- 1.1 This is a full planning application for the erection of a dwelling which would replace an existing static caravan on the site. The proposed dwelling is of two storeys and attains a height of around 7 metres to the ridge of the pitched roof. There is a single storey section to the dwelling which has a flat roof. The proposed dwelling has an external floor area of around 150m<sup>2</sup> having a length and width of around 13 by 10 metres. In the course of determining the planning application amended plans were submitted aimed at keeping the elevations simpler to reflect the local vernacular, incorporating render and dark tiles, additional information was also provided in the form of a landscaping plan and images of nearby houses.
- 1.2 There are two vehicular access points proposed to this development to the west and the east. The access to the west crosses land, which is within separate ownership, but it is understood that the owner of the land has been served notice as required under the planning act. Revised drawings have been submitted for both access points showing the distances of each of the visibility splays at each access.
- 1.3 Coal Mining Risk Assessment report has been received at the time of writing.

### **2.0 SITE LOCATION/DESCRIPTION**

- 2.1 The site is situated in a countryside location at Malehurst. The public highway leading north to the site from the A488 is generally single carriageway. There is a static caravans and various other structures present on the application site. The perimeters of the site are defined by close boarded type fencing. There are other existing developments in the vicinity which are not dissimilar in character and appearance.

- 2.2 Planning permission under reference 16/04234/OUT was granted for a replacement dwelling on the enquiry site on 05.06.2017. When this planning application was being assessed there was a prefabricated dwelling present on the site which has since been demolished. Only the means of access was approved as part of the permission granted under reference 16/04234/OUT, with the appearance, landscaping, layout and scale of the development being reserved for later approval as part of the reserved matters. None of these reserved matters were submitted for the approval of the local planning authority within the time limits set out in the planning permission and on this basis the planning permission would appear to have lapsed.
- 2.3 Planning permission under reference 20/01729/FUL was subsequently granted on the site for the siting of a single mobile home for residential use. Condition 4 of this planning permission stipulated that the mobile home/lodge shall comply with the definition of a caravan in terms of size in accord with the Caravan Sites Act 1968. The delegated report on this application explains that it was considered that there was a lawful residential use on the site and on this basis the principle of residential caravan was considered acceptable, notwithstanding the location in the countryside in planning policy terms (where policies of restraint would normally apply for such developments).
- 2.4 The existing vehicular access from the public highway is shared with an adjacent site which abuts the north western and north eastern boundaries of the application site. There are two touring caravan present on this adjacent site which are understood to be used for residential purposes. A planning application under reference 22/01501/FUL was refused for the retention of these caravans on the 20.09.22 on number of grounds which included the sustainability credentials of the site and the inadequacy of the visibility in both directions at the vehicular access with the public highway (comprising the western access to the current proposal).

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

- 3.1 The Parish Council and the local councillor support the planning application and as this differs from the officer recommendation the matter was reported to the agenda setting committee and it was decided that the matter should be considered by the planning committee.

### **4.0 Community Representations**

#### **4.1 Consultee Comment**

##### **4.1.1 Pontesbury Parish Council – Supports**

The Parish Council is minded to support this application, although in open countryside. On balance the Parish Council feels that the benefits of this application outweigh the fact that it is outside the development boundary. The site has long-

established residential use and the house replacing a caravan will be a visual improvement, but we would like to see some small changes in design so that it fits in better with the local built environment. The landscaping of the site will bring visual and ecological benefits, but the application requires a detailed soft-landscape plan. The proposed dwelling will meet the specific housing needs of the family, especially the disabled child. The Parish Council propose the existing access be stopped-up and the new access adopted. It is not an isolated dwelling, but one of a scattering of 6 houses. Although flooding of the site is unlikely, we recommend that the floor be raised by 150mm.

### **Pontesbury Parish Council – Supports**

The revised house design better reflects neighbouring properties. A further improvement to match Pontesbury architecture would be some feature window sills to the front elevation as shown in Pontesbury Neighbourhood Plan. The landscape plan will better reflect its countryside location and soften the existing fence boundary.

#### **4.1.2 Councillor Nick Hignett - Supports**

I support this application for the following reasons; Although classed as being in open countryside, this site has a long-standing history of being used for residential purposes. The caravan presently on the site has a permanent permission, but a dwelling would be more aesthetically pleasing, as well as more suitable for providing long-term accommodation during weather extremes. This is a strong consideration, as We have declared a Climate Emergency, and caravans are exceptionally difficult and expensive to heat or cool down. As a Council, we have a statutory duty to provide sufficient land to accommodate custom-build dwellings. This proposal would satisfy that need, including being able to accommodate adaptations to help with mobility issues as they arise in the future. I do acknowledge that these matters are due to present circumstances, which would change over time, whereas the dwelling is likely to be permanent. The site needs hedging on the roadside perimeter in the long term, to replace the fencing currently on site. Any outdoor lighting should be minimal to limit the intrusion to wildlife in the area, particularly as the site is adjacent to watercourses. Finally, if Planning Officers are minded to refuse this application, then I request that it be referred to Committee for determination, due to the unusual issues associated with this particular case.

#### **4.1.3 SUDS – No Objections**

Conditions and informatives are recommended.

#### **4.1.4 SC Regulatory Services – No objections.**

Further to comments by Environmental Protection recommending conditions to require a mine gas risk assessment should planning permission be granted, a

report by Sladen Associates; Coal Mining Risk Assessment; Proposed Residential Development, The Waterfall, Malehurst, Shropshire; prepared for David McDonald; January 2023; Job No. 22 2536, has now been submitted to support this application.

The Coal Mining Risk Assessment by Sladen Associates, includes a Mine Gas Risk Assessment that has been carried out having regard to CL:AIRE - Good Practice for Risk Assessment for Coal Mine Gas Emissions; October 2021 (ISBN 978-1-905046-39-3).

The mine gas risk assessment has concluded that the risk to the development from mine gas is very low and therefore no special precautions are necessary with respect to mine gas. Accordingly, the conditions as originally recommended by Environmental Protection are no longer required.

#### 4.1.5 **SC Affordable Housing**

No affordable housing obligations apply to the proposed development.

#### 4.1.6 **SC Highways DC – No objection**

Shropshire Council as Highway Authority raises no objection in principle to the proposed dwelling. It is considered that the likely vehicular movements generated by one dwelling will not have a significant impact on the surrounding highway network. The proposed eastern access as detailed on Drawing LGA 417D04 REV A provides overall betterment to the existing situation and previous applications considered on this site.

It is noted that the applicant and their agent has previously confirmed that they would like to retain the existing western access to the site, but the eastern access will provide primary access to the site. Visibility for vehicles emerging from the western access is restricted and falls well below the minimum standard based on the surrounding highway conditions. On this basis, we would support the comments submitted by Pontesbury Parish Council that recommends that the existing western access is closed and access to the proposed dwelling is via the eastern access only. Vehicle parking for the dwelling is located to the eastern boundary and based on the landscape drawing the area to the west of the property is patio area and not suitable for vehicles, on this basis no vehicular access is required. In the interest of highway safety it is recommended that the existing western access is closed off and a consideration is given to attaching a planning condition to any permission granted that controls access to the site. It is noted that the western access falls outside of the owners control but does form part of the red line boundary. It is assumed on that basis it forms part of the application.

#### 4.1.7 **SC Ecologist – No objections**

Conditions and informatives have been recommended to ensure the protection of wildlife and to provide ecological enhancements under NPPF, MD12 and CS17. I have reviewed the information and plans submitted in association with the application and I am happy with the survey work carried out. The Ecological Impact Assessment carried out by Churton Ecology (October 2022) determined the site to be of low ecological diversity. However, the neighbouring stream provides suitable habitat for bats and otters. Mitigation measures have been recommended to protect these species, which will be strictly adhered to. No further surveys were recommended. Any external lighting to be installed on the building should be kept to a low level to allow wildlife to continue to forage and commute around the surrounding area. SC ecology require biodiversity net gains at the site in accordance with the NPPF and CS17. The installation of a bat box/integrated bat tube will enhance the site for wildlife by providing additional roosting habitat.

#### 4.1.8 **Trees Team – No objection.**

There are a number of trees on land adjacent to the site, however, these are away from the area of development and as the site is set to hard standing and considerably compacted it is unlikely that the proposed development will impact any of these trees. The proposed development will not impact any significant tree.

#### 4.1.9 **Coal Authority – No objection.**

The Coal Authority Response: Material Consideration

As you are aware, the Coal Authority objected to this application in our previous letter to the LPA dated 14 December 2022 as no Coal Mining Risk Assessment had been submitted at that time to assess the coal mining legacy identified at this site.

We welcome the submission of the Coal Mining Risk Assessment Report (22 2536, January 2023) prepared for the proposed development by Sladen Associates. The Report has been informed by an appropriate range of sources of historical, geological and coal mining information.

Having carried out a review of the available information, the report author informs that it is not considered likely that any unrecorded workings would be present at significantly less than 30m depth and as the thickness of the shallowest seam is only 0.45m concludes that the site is not at risk of surface instability and no intrusive ground investigations are required. However, recommendations have been made that foundations (re-enforced) should be designed for the proposed building.

Due to the history of mining in the area, we welcome the comments made that unrecorded mine entries cannot be discounted and therefore vigilance should be maintained during all site preparation and excavation works. In the event that a mine entry is found, the area should be made safe and the feature is assessed by a

competent person. The Coal Authority will also need to be notified if the mine entry relates to former coal mine workings.

The Coal Authority Recommendation to the LPA

The Coal Authority considers that the content and conclusions of the Coal Mining Risk Assessment Report (22 2536, January 2023) are sufficient for the purposes of the planning system in demonstrating (based on the informed professional opinion of Sladen Associates) that the application site is, or can be made safe and stable for the proposed development (NPPF paras. 183 and 184). The Coal Authority therefore withdraws its objection to the proposed development. However, further more detailed considerations of foundation design will be required as part of any subsequent building regulations application.

## **4.2 Public Comments**

- 4.2.1 The planning application was advertised with a site notice and the publicity period expired on the 14.12.2022. No representations have been received at the time of writing.

## **5.0 THE MAIN ISSUES**

Principle of development  
Siting, scale and design of structure

## **6.0 OFFICER APPRAISAL**

### **6.1 Principle of development**

- 6.1.1 The site is located outside of any recognised settlements and is therefore located in the countryside under the provisions of the development plan. Policy CS5 "Countryside and the Green Belt" of the Core Strategy does not support the provision of new open market residential development in the countryside.
- 6.1.2 Policy MD7a (Managing Housing Development in the Countryside) states that replacement dwelling houses will only be permitted where the dwelling to be replaced is a permanent structure with an established continuing residential use. Paragraph 2.22 of the Type and Affordability of Housing SPD (SPD) states "In the first instance, rural replacement dwellings outside of settlements will only be permitted provided that the existing building has established and continuing residential use rights and has not been abandoned".
- 6.1.3 Planning permission was granted in 2017 for a replacement dwelling on the site in lieu of a prefabricated dwelling formerly present, but this planning permission lapsed in 2020. In 2020 following the demolition of this prefabricated building

planning permission under reference 20/01729/FUL was granted for a mobile home conforming to the definition of caravan. There is now an existing static caravan on the site and on this basis, it is understood that planning permission 20/01729/FUL has lawfully been implemented for a residential caravan. The site thus benefits from an established continuing residential use which meets one of the requirements of policy MD7a and the SPD.

- 6.1.4 The other requirement of policy MD7a is that that the replacement dwelling will only be permitted where the dwelling to be replaced is a permanent structure, the SPD refers to this requirement in terms of an existing building (being present). The prefabricated dwelling previously present would likely have amounted to a building which would have been regarded as a permanent structure/building under MD7a and the SPD, but this prefabricated dwelling has since been demolished. Planning permission under 20/01729/FUL was subsequently granted and permits a single mobile home for residential use complying with the definition of a caravan in terms of size in accord with the Caravan Sites Act 1968. A caravan amounts to the use of land only and its replacement with a dwelling would not meet the requirements in policy MD7a or the SPD as there is no permanent structure/building present on the site. The harm here is that that the proposed dwelling is being proposed in lieu of a static caravan, and its replacement with a permanent structure/building contravenes the general policies of restraint which apply in the countryside to protect the rural amenities of the area. The parish council take a different position and contend that as the site has a long-established residential use, such that replacing a caravan with a house will be comprise a visual improvement. As explained previously this position does not align with the provisions of policies MD7a or the SPD which require that there is a permanent structure/building present on the site.

## **6.2 Siting, scale and design of structure**

- 6.2.1 This section of the report focuses on the requirement in policy MD7a that the replacement dwelling should normally be sited on the same footprint and should not be materially larger than the dwelling it replaces, albeit that in this case the dwelling would replace a caravan which is not a permanent structure/building. The supporting text of policy MD7a at paragraph 3.63 explains that the control of replacement dwellings in the countryside needs to be considered in conjunction with the general criteria in the policy in terms of visual, heritage loss and other impacts associated with the proposal. It goes on to explain that in the case of residential properties there is additionally the objective of regulating the size of replacement properties in order to limit the tendency towards the provision of larger dwellings in the countryside and to maintain a mix of dwelling types. Paragraph 2.23 of the SPD contains similar provisions.
- 6.2.2 The existing caravan is situated in very close to the western and northern boundaries of the site. The proposed replacement dwelling is roughly in the same position, but additional space has been provided between it and the boundaries of



the site. As explained previously a caravan is not a permanent structure/building so it does not have a footprint in the same sense as a building (being instead an use of land). Having regard to these considerations no objections are raised to the proposal in terms of these requirements as they are not wholly applicable in the circumstances of this case.

6.2.3 Planning permission under reference 20/01729/FUL was granted for the siting of a single mobile home for residential use. Condition 4 of this planning permission stipulated that the mobile home/lodge shall comply with the definition of a caravan in terms of size in accord with the Caravan Sites Act 1968. The proposal comprises a building as opposed to a mobile home/lodge and it is significantly larger than a caravan as defined in the Caravan Sites Act 1968. Being two storey with a height of 7 metres, a length and width of around 13 by 10 metres and having a floor area of around 150m<sup>2</sup>. Taken together these considerations reinforce the earlier conclusion that the proposal will have a detrimental impact on the rural amenities of the area because of the scale and massing of the replacement dwelling in comparison with the static caravan which is being replaced.

6.2.4 The elevations of the proposed development have been amended with a view to addressing the comments of the parish council who have acknowledged these changes and but suggested that feature window sills are also added. The parish council also express a view that landscaping the site would improve the visual amenities of the area. It is acknowledged landscaping the site could be regarded as a betterment in environmental terms, but it is not considered that this is a matter which outweighs the more fundamental policy objections which apply to this proposal.

### 6.3 Other Matters

6.3.1 It is understood that the proposed dwelling is designed to provide a specific need for the applicant's family. The personal circumstances of the applicant are, however, rarely matters which should be attributed significant weight, this is primarily because planning permission runs with the land so any permission granted could also be developed by others.

6.3.2 The parish council state that the western vehicular access to the development should be closed up as part of any planning permission granted. SC Highways raise no objections to the proposed development but similarly recommended that the western access is closed such that access to the development is solely via the eastern access. The applicant's have confirmed that they are agreeable to closing the western access and this is therefore a matter that could be regulated by way of a planning condition.

6.3.3 Following the submission of a Coal Mining Risk Assessment the Coal Authority has confirmed that this is acceptable and has now removed its objection.

## 7.0 CONCLUSION

7.1 Whilst the site has a lawful residential use for the siting of a caravan it is not considered that its replacement with a dwelling is acceptable in planning policy terms given the provisions of policy MD7a and the SPD. It is also considered that replacing a caravan with a dwelling would contravene policies of restraint in the countryside and have a detrimental impact on the rural amenities of the area.

## 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:

CS5 - Countryside and Greenbelt

CS6 - Sustainable Design and Development Principles

MD7A - Managing Housing Development in the MD7A - Managing Housing Development in the Countryside

SPD Type and Affordability of Housing

### RELEVANT PLANNING HISTORY:

16/04234/OUT Outline application for the erection of a replacement dwelling to include access GRANT 5th June 2017

20/01729/FUL Siting of mobile home/lodge for residential use GRANT 8th July 2020

PREAPP/21/00518 Proposed erection of replacement dwelling PREUDV 14th February 2022

22/05036/FUL Erection of one dwelling PDE

# AGENDA ITEM

- 14th February 2023

The Waterfall

SA/77/0075 Continued use of land as a residential caravan site, including the provision of hut. PERCON 28th April 1977  
SA/78/0948 Continue to site a residential caravan and hut. PERCON 31st October 1978  
SA/84/0954 Continue to station a temporary residential caravan with hut. (Renewal of previous approval S81/851/17/75 dated 3/11/81). PERCON 16th November 1984  
SA/81/0851 Continue to site a residential caravan with hut. (renewal of previous approval S78/948/17/75 dated 31/10/78). PERCON 3rd November 1981  
SA/75/0020 To site one residential caravan and hut. PERCON 25th March 1975  
SA/87/1231 Continue to station a temporary residential caravan with hut. (Renewal of previous approval S84/954/17/75 dated 16/11/84). PERCON 2nd June 1988  
SA/84/0955 Continue to use land as a residential caravan site. (Renewal of previous approval S81/801/25/77 dated 3/11/81). PERCON 16th November 1984  
SA/81/0801 To continue to use land as a residential caravan site. (renewal of previous approval S78/879/25/77 dated 31/10/78). PERCON 3rd November 1981  
SA/78/0879 To continue to use land as a residential caravan site. PERCON 31st October 1978  
SA/77/0043 Continued use of land as a residential caravan site. PERCON 28th April 1977

## 11. Additional Information

View details online: <http://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=RKZRHOTDK8B00>

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 Richard Marshall

Local Member

Cllr Nick Hignett

Appendices

APPENDIX 1 - Conditions

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- 14th February 2023

The Waterfall