

AGENDA ITEM



Committee and date
Southern Planning Committee
14th February 2023

Development Management Report

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

Summary of Application

Application Number: 22/03728/FUL	Parish:	Chelmarsh
Proposal: Erection of an affordable dwelling, detached garage and associated works		
Site Address: Proposed Affordable Dwelling To The North Of Glazeley Bridgnorth Shropshire		
Applicant: MR JACK GROVES		
Case Officer: Sara Jones	email: sara.jones@shropshire.gov.uk	

Grid Ref: 370891 - 289473



Recommendation: - Delegated Powers to Officers to Refuse, should the S106 not be completed by the 28.02.2023.

Refuse planning permission for the following reason:

1. The site is located in the countryside in an area not designated for new open-market residential development under Policies MD1 of the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan. Although it has the Local Planning Authority previously been considered suitable for an affordable dwelling to meet a specific and demonstrable local housing need, the applicant has failed to conclude within a reasonable timescale a Section 106 agreement to secure the development as an affordable home for occupation solely by qualifying local people in perpetuity. Consequently, no exceptional criteria for allowing a new dwelling in the countryside are in fact met, and the proposal is contrary to Policies CS1 and CS5 of the Shropshire Local Development Framework Adopted Core Strategy, plus SAMDev Plan Policy MD7a.

UPDATE REPORT

1.0 Purpose of report

- 1.1 This application seeks full planning permission to erect a single-storey 'affordable' dwelling for occupation by a named individual confirmed by the Council's Housing Enabling Officer as being in local housing need.
- 1.2 At a meeting on 18 October 2022, members of the Planning Committee resolved, contrary to the Officer recommendation, to approve the application and grant permission, subject to prior completion of a legal agreement under Section 106 of the Town and Country Planning Act 1990, to secure the development as an affordable home for occupation solely by qualifying local people in perpetuity. Members agreed that there was an identified need for the dwelling and that they considered that the Uplands constituted a settlement which meant that the application was compliant with the relevant policies. A Section 106 legal agreement is essential because the site is in open countryside, outside any settlement designated for new open-market housing under the relevant Local Plan policies. However, the agreement remains un-concluded, and hence planning permission has not been issued. This update report therefore invites members to consider refusal of the application.
- 1.3 In addition, an additional representation has been received objecting to the application.
- 1.4 For background and ease of reference, the case officer's original committee report and recommendation are attached as Appendix A.

2.0 Section 106 agreement

- 2.1 It is understood that the requisite Section 106 agreement has been prepared but has not been concluded because of delays in transferring the ownership of the

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Southern Planning Committee - 14th February 2023

Proposed Affordable Dwelling
To The North Of

land and registration at the Land Registry. Officers appreciate that this is to some extent outside the applicant's control, and that attempts to resolve the issue are ongoing. Ultimately, however, the fact that the matter remains unresolved after over 12 weeks gives rise to doubts over whether there is any serious commitment to the agreement being concluded. Thus, given that the development would be fundamentally unacceptable without the agreement, refusing planning permission is now recommended instead.

3.0 Additional Representation

3.1 An additional representation has been received which raised concerns about rubble, bricks, other loose building materials during the building construction, additional traffic using the access/highway safety, wildlife protection, the additional sewage arrangements required and lack of need for a dwelling.

3.2 The issue of need and access were considered by the Committee when they considered the application back in October 2022. The relevant consultees were content with the level of survey work undertaken (ecology) and appropriate conditions and informatives can be attached to ensure wildlife protection, and the satisfactory drainage of the site.

4.0 CONCLUSION

4.1 Whilst it is acknowledged that the applicant cannot produce proof of title until the land transfer has been completed by the Land Registry the failure to conclude the Section 106 agreement within a reasonable timescale makes it appropriate to now refuse planning permission on the basis that it has not been possible to secure the development as an affordable dwelling, which in turn means the application fundamentally conflicts with the relevant development plan policies.

APPENDIX A:

**COPY OF OFFICER REPORT AND RECOMMENDATIONS
CONSIDERED AT 18 OCTOBER 2022 SOUTH PLANNING COMMITTEE MEETING**



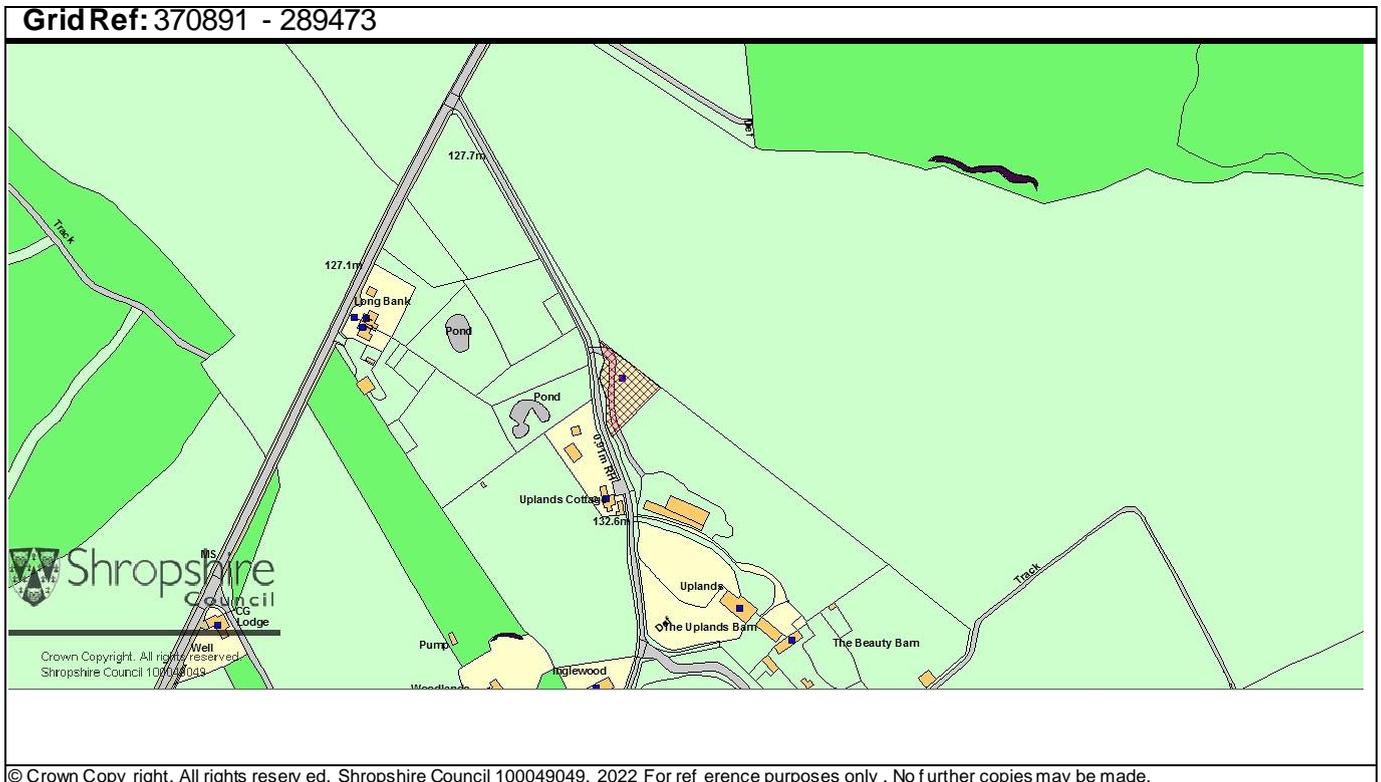
Committee and date
Southern Planning Committee
18th October 2022

Development Management Report

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Summary of Application

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

Recommended Reason for refusal

1. The site is not part of or adjacent to a recognisable named settlement, there are only a limited number of dwellings nearby, most are separated from one another by agricultural land; cumulatively the built environment in the area is made up of sporadic, isolated pockets of development. The principle of the proposed development is therefore contrary to the objectives of the National Planning Policy Framework, Policies CS1, CS5 and CS11 of the Shropshire Local Development Framework Core Strategy, Policies MD3 and MD7a of the Shropshire Council Site Allocations and Management of Development Plan, and the Council's Supplementary Planning Document on the Type and Affordability of Housing.

REPORT

1.0 THE PROPOSAL

- 1.1 This application involves the erection of a dwelling which is made under the Council's affordable housing single plot exception policy. The scheme indicates the erection of a bespoke single storey dwelling and detached double garage. The dwelling is proposed to be located within the corner of a field adjoining an access track which is also a bridleway, and currently serves five other dwellings at the Uplands and includes the applicants current home with his parents at Uplands Barn.
- 1.2 The foul drainage is proposed to be directed to a package treatment plan and suitably designed drainage field, and the surface water drainage directed to a suitably designed soakaway. The existing access track joins the B4363 which links the two market towns of Bridgnorth and Cleobury Mortimer and terminates at Woodlands Hall, a large Country house and former farm buildings converted to dwellings known as The Granary, The Coach House, The Dairy and The Sawmill.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 The site forms part of a field opposite Uplands Cottage and to the north of a small loose group of dwellings (The Uplands, The Uplands Barn, Inglewood and Woodlands Cottage). The site is accessed off a track which joins the B4363 some 200 metres to the north and terminates some 600 metres to the south at Woodlands Hall, a large Country house and former farm buildings converted to dwellings known as The Granary, The Coach House, The Dairy and The Sawmill. Beyond the site, in the wider landscape, are rolling agricultural fields and scattered smallholdings.
- 2.2 The site is located approximately 0.8 km from the nearest settlement of Glazeley to the south and the settlement of Chelmarsh which is located over a kilometre away to the southeast.

3.0 REASON FOR DELEGATED DETERMINATION OF APPLICATION

3.1 The Parish Council supports the application contrary to the Officer recommendation and the Ward Member supports the application. The Principal Planning Officer in consultation with the Chairman of the Planning Committee have considered this application and have concluded that the application raises material planning issues and should be determined by Committee.

4.0 Community Representations

Consultee Comment

Chelmarsh Parish Council - No objections - felt it was a small, low impact quite sensitive dwelling.

SC Affordable Housing – Confirm that Mr Jack Groves has demonstrated housing need, strong local connections, and a need to live in the local area. Moreover, due to issues of availability he is unable to meet his own housing need within the parish without assistance from the policy.

SC Highways – No objection. Recommend informatives.

SC Rights of Way – Comments:

The application proposes access over a route that is recorded as a public bridleway that does not appear to carry public vehicular rights. The applicant is very strongly advised to satisfy themselves that they can demonstrate a sufficient vehicular right of access before committing further resources to the proposal. Neither the granting of planning permission, nor any associated obligations relating to the proposed access, either grant or imply the existence of any right for the benefit of the applicant to use that way with vehicles and it is a road traffic offence to drive a motor vehicle on a bridleway without lawful authority.

Although this bridleway is not directly affected by development the applicant must adhere to the following criteria:

- The right of way must remain open and available at all times and the public must be allowed to use the way without hindrance both during development and afterwards.
- Building materials, debris, etc must not be stored or deposited on the right of way.
- There must be no reduction of the width of the right of way.
- The alignment of the right of way must not be altered.
- The surface of the right of way must not be altered without prior consultation with this office; nor must it be damaged.
- No additional barriers such as gates or stiles may be added to any part of the right of way without authorisation.

SC Ecology – Reconsulted – response awaited.

SC Ecology (23.08.2022) – Further information requested regarding Great Crested Newts.

SC Trees – No objection. Recommend conditions.

Comments:

Analysis of aerial GIS reveals the presence of a number of mature trees along the access track and near the entrance to the site. I would recommend a tree survey be undertaken by a competent arborist to identify and specify any facilitation pruning works that may be required and to propose suitable tree protection measures to avoid damaging or harming retained trees and hedgerows during implementation of any approved development. Ideally all construction (including installation of utilities and drainage infrastructure) will be located outside the root protection area (RPA) of nearby trees. Special design and construction methods may be required, subject to the advice of a competent arborist, where development is proposed within the RPA.

I also consider that the landscape and wildlife value of the site could be enhanced through a suitably designed landscaping scheme, incorporating the judicious planting of new native trees and hedgerow.

SC Environmental Protection – Notes that the site is within a Coal Mining Reporting Area (as defined by the Coal Authority). Recommend condition regarding a Mine Gas Risk Assessment.

SC Drainage - Recommend informatives.

Public Comments

Site notice displayed. No representations received.

5.0 THE MAIN ISSUES

Principle of development

Siting, scale, and design of structure/Visual Amenity

Impact on neighbours/residential amenity

Highways

Drainage

Natural Environment – Ecology

6.0 OFFICER APPRAISAL

6.1 Principle of development

6.1.1 The site lies in the countryside where Shropshire Core Strategy Policy CS5 permits “limited local needs affordable housing” on exception sites that accord with Policy CS11, namely, in and adjoining recognisable named settlements.

6.1.2 The main issues raised by this aspect of the application are as follows:

- Does the applicant fulfil the requirements of the policy with regard to being in local housing need, and having strong local connections; and
- Whether or not the site accords with the requirements of the policy.

6.1.3 The Councils Housing Enabling and Development Officer has confirmed that the applicant complies with the policy requirements with regard to having strong local connections, and a need to live in the local area. Mr Groves is in partnership with his brother, and they run their livestock business from Uplands Barn within the parish. They currently have 400 ewes which 300 are in lamb. To ensure high welfare standards it is preferable for Mr Groves to live a short distance away from his livestock. From financial information provided to SC's Rural Enabler, Mr Groves is unable to purchase a suitable property in the immediate area due to cost and availability, this is due to a lack of lower cost smaller properties available locally at the time of his application, he is unable to meet his own housing need within the parish without assistance from the policy. The applicant therefore meets the local housing need elements of the policy.

6.1.4 In relation to the second issue, to meet the Councils policy sites must be in locations that demonstrably form part of or adjoin a recognised named settlement.

6.1.5 The main issue raised by this application is therefore whether the site forms part of or adjoins a recognised named settlement. This can be a finely balanced decision and the Councils SPD Type and Affordability of Housing (para. 5.13 – 18) advises that:

- *A settlement always comprises a group of houses occupied by households from different families.*
- *The group becomes a settlement due to the number and proximity of the houses in the group.*

Although a matter of judgment in each case, particularly for settlements where the number is small or where the houses are dispersed, for example strung along a road, it is the combination of these two factors that determines whether the dwellings constitute a settlement.

6.1.6 Additionally, the SPD advises that a settlement is a relationship between different properties accordingly *the limits of the settlement are defined by where the relationship peters out. This varies from settlement to settlement, depending on a number of factors. For example, a site a short distance from a loose-knit settlement may be considered "adjoining" while a similar distance in a tightly clustered settlement would not be. Larger settlements also have a wider "pull" or "sphere of influence" than small settlements, influencing the relationship between a site and the settlement.*

6.1.7 In this case Officers are of the view that the site is not sufficiently close to the named settlements of Glazeley, which is very modest but relatively tight knit or Chelmarsh which whilst a much larger settlement lies over a kilometre away to

the southeast as the crow flies or significantly further if travelling by road. Eudon Burnell whilst named it is dubious whether this would even constitute a settlement, is also located some 0.8 km to the east. The site lies to the north of the loose collection of properties accessed off the unadopted access track to Woodlands Hall, which whilst occupied by different families, would not appear as a settlement for the purposes of the Councils exception site policy. Indeed the proposed site would occupy a relatively isolated position in relation to the existing dwellings in the vicinity and as such the development would represent an intrusion into the open countryside.

6.2 Siting, scale, and design of structure/Visual Amenity

6.2.1 Core Strategy policy CS6 seeks to ensure that all development is appropriate in scale, density, pattern and design taking into account the local context and character. SAMDev Plan policy MD2 supplements CS6, expanding on how this objective would be achieved.

6.2.2 Whilst it is considered that a dwelling in this location would represent an intrusion into the open countryside in this location, Officers acknowledge that the single storey nature of the design and materials proposed to be used (vertical timber boarding and corrugated plastic-coated sheeting) would be acceptable and would assist to minimise its impact. The internal floor area is under 100 sq metres which is within the policy requirements for an affordable dwelling. The proposed detached garage building would not be contrary to the current planning policies with respect to single plot affordable dwellings.

6.2.3 The site is relatively exposed and as observed by the SC Tree Officer a suitably designed landscaping scheme incorporating the judicious planting of new trees and hedgerow would assist in assimilating the development into the landscape. The submission of an appropriate landscape scheme could be conditioned should Members determine to grant planning permission.

6.2.4 As noted above the SC Tree Officer has also observed that there are a number of mature trees along the access track and near the entrance to the site, and that there may be a requirement for facilitation pruning and also advises that ideally all construction (including installation of utilities and drainage infrastructure) should be located outside the root protection area (RPA) of nearby trees.

6.3 Impact on neighbours/residential amenity

6.3.1 Policy CS6 and MD2 seek to ensure that development contributes to the health and well-being of communities, including safeguarding residential and local amenity. The proposed siting and design of the dwelling would not result in any undue overlooking or overbearing/overshadowing impacts on neighbouring properties.

6.4 Highways

6.4.1 The Core Strategy policy CS6 objective of achieving safe developments, in the context of highway safety, is echoed by paragraph 110 - 111 of the NPPF. The Council's Highways Team are content that the proposed access arrangements

would not be detrimental to highway safety, being safe and of a suitable standard for vehicles.

6.4.2 The site is accessed via a bridleway and whilst it is noted that other residential properties gain access from the bridleway it is unclear whether the development would have a vehicular right of access. This matter has been raised with the Agent and a response is awaited. The Planning Committee Members will be updated at the Committee regarding this issue and also the refuse collection arrangements.

6.5 Drainage

6.5.1 Core Strategy policy CS18 seeks to achieve a reduction in surface water run off by the use of sustainable drainage systems within developments.

6.5.2 The information submitted with the application indicates that the surface water would be disposed via a soakaway system and states that the foul drainage arrangements are to be disposed of by way of a package treatment plant. The Councils Drainage Team have been consulted on the application and raise no objection. It is therefore considered that an appropriately worded condition would ensure that an appropriate drainage system to serve the development is installed and flooding is avoided.

6.6 Natural Environment – Ecology

6.6.1 National guidance gives a duty to public bodies (including Local Planning Authorities) to ensure development does not harm protected species or its habitat. The NPPF emphasises that Local Planning Authorities should ensure development contributes to and enhances the natural and local environment including minimising impacts on biodiversity and providing net gains where possible. Core Strategy policy CS17 and SAMDev policy MD12 reflects the obligations placed by Wildlife Legislation to ensure the protection and enhancement of ecological interests.

6.6.2 The SC Ecology Team has identified the need for a great crested newt survey should be carried out given the proximity of ponds. Accordingly, the applicant has submitted an Ecological Impact Assessment which at the time of writing this Report is under consideration by the SC Ecology Team. The Members of the Planning Committee will be updated at the Planning Committee.

6.7 Other Matters

The site is located within a coal reporting area. Any new dwelling within such an area is considered by the Environment Protection Team to require a mine gas risk assessment to ensure the residential standards of living are acceptable in terms of public health. This has not been undertaken as part of this application but could also be conditioned and therefore again would not constitute a reason for refusal.

Should the Planning Committee resolve to grant planning permission the decision should be subject to a Section 106 Legal Agreement to ensure that the dwelling

remains an affordable dwelling in perpetuity.

7.0 CONCLUSION

7.1 The proposed single plot affordable dwelling on balance is not considered to be part of, adjacent to or within the sphere of influence of a recognisable named settlement given the distances from nearby settlements. As such a dwelling in this location would represent an intrusion into the open countryside in this countryside location and the proposal does not accord with the exception sites policy in this respect and therefore is not acceptable development in principle. Consequently, this application is recommended for refusal on the above grounds.

7.2 The design, scale, visual impact and neighbour amenity impacts are considered to accord with the relevant criteria of the outlined policies and are acceptable to not represent reasons for refusal individually.

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:
National Planning Policy Framework

Core Strategy and SAMDev Plan Policies:

CS1 - Strategic Approach

CS4 - Community Hubs and Community Clusters

CS5 - Countryside and Greenbelt

CS6 - Sustainable Design and Development Principles

CS11 - Type and Affordability of housing

CS17 - Environmental Networks

CS18 - Sustainable Water Management

MD2 - Sustainable Design

MD7A - Managing Housing Development in the Countryside

MD12 - Natural Environment

SPD Type and Affordability of Housing

RELEVANT PLANNING HISTORY:

PREAPP/16/00353 Erection of an affordable dwelling PREUDV 8th August 2016
PREAPP/20/00538 Erection of two affordable homes PREUDV 10th December 2020

11. Additional Information

View details online: <http://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=RGIKPYTDI7O00>

List of Background Papers Ecological Impact Assessment
Cabinet Member (Portfolio Holder) Councillor Richard Marshall
Local Member Cllr Robert Tindall