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# Appeal Decision

Site visit made on 9 January 2023

**by Tom Bristow BA MSc MRTPI AssocRICS**

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

**Decision date: 21<sup>st</sup> February 2023**

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**Appeal Ref: APP/L3245/W/22/3304991**

**Old Port Cottage, Llwyn Road, Oswestry SY10 7AA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
  - The appeal is made by Mr and Mrs Pritchard against the decision of Shropshire Council.
  - The application ref. 21/05972/FUL, dated 22 December 2021, was refused by notice dated 17 February 2022.
  - The development proposed is described on the application form as 'change of surface of existing equestrian manège and all associated works.'
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## Decision

1. The appeal is dismissed.

## Procedural matters

### *Existing use*

2. This proposal follows a previously unsuccessful application for a manège.<sup>1</sup> I have determined the current proposal on its merits, the details of which differ from its predecessor. Nonetheless the previous application form stated that the existing use of the site was 'grazing for horses'. The Council's decision notice in respect of the current scheme describes the proposal as including change of use. Material changes in use are development under section 55(1) of the Town and Country Planning Act 1990 as amended (the '1990 Act').
3. Conversely the appellants state that the existing use of the site, presently principally rough grass, is as an equestrian manège. At the time of my site visit there was a wooden post and rail fence in place along with various show jumps. It may be that an equestrian use is ancillary to a residential use. Jumps or other equestrian paraphernalia may not amount to operational development. There is, however, no definitive information as to whether the scheme represents a change of use, or whether anything that already exists is lawful (for example a certificate of lawful development, 'CLD', under section 191 or 192 of the 1990 Act). More importantly there is an appeal before me, and the question of change of use is not integral to my reasoning.

### *Surrounding context*

4. The site is to the south of what is described in list entry no. 1014899 as the scheduled monument of 'Old Oswestry hillfort, and two adjacent sections of Wat's Dyke'.<sup>2</sup> It is some 50m from the nearest edge of the hillfort (as set out in

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<sup>1</sup> Ref. 20/01309/FUL.

<sup>2</sup> Under section 1 of the Ancient Monuments and Archaeological Areas Act 1979 as amended.

the appellant's Historic Environment Desk-Based Assessment, 'HEA'). The site is in the lee of the hillfort, at a relative low point in the topography. A drainage ditch or leat tracks broadly east west by the edge of wider holding. The site falls about 70m from two sections of Wat's Dyke, both of which are within the same ownership as Old Port Cottage. Those sections of Wat's Dyke are bisected by an historic track. The track connects Llwyn Road to a cluster of buildings in commercial use by the B5069. That cluster is annotated as 'Oldport' on historic mapping as far back as 1830.

### *Policy context*

5. Each proposal must be determined in accordance with the development plan unless material considerations indicate otherwise.<sup>3</sup> The site falls within the countryside, some 250 metres or less from the built form of Oswestry.<sup>4</sup> Paragraph 174. b) of the National Planning Policy Framework ('NPPF') sets out how planning should contribute to and enhance the natural and local environment, including by recognising the intrinsic character and beauty of the countryside. In headline terms policy CS5 of the Shropshire Core Strategy (adopted February 2011, the 'CS') seeks to 'strictly control' development in the countryside in accordance with national planning policies, including via the maintenance of countryside character.<sup>5</sup> CS policies CS6 and CS17 similarly set out how, amongst other things, development should appropriately protect the natural and historic built environment.
6. In summary, policy MD2, criterion iii., and policy MD13 of the Site Allocations and Management of Development Plan (adopted December 2015, 'SAMDev') seek to ensure that development integrates suitably with the historic environment. Similarly NPPF paragraphs 189 and 199 set out how great weight should be given to the conservation of designated heritage assets, irreplaceable resources, relative to their significance. Significance may be affected 'indirectly', i.e. by virtue of changes to the surroundings in which an asset is experience. Not all change is harmful, and not all elements of setting contribute equally to significance.

### **Main issue**

7. Against the background above, the main issue is the effect of the proposal to the significance of the scheduled monument.

### **Reasons**

#### *Significance and setting*

8. The hillfort is a fine example of a large multivallate hillfort. Having been established for defensibility on a glacial mound, it is an imposing feature in the landscape. It was created by sculpting the land. Although likely dating principally from the Iron Age, there is evidence of a long continuity of human settlement there, including neolithic remains. The current form of the scheduled monument represents a complex and organic accretion of change over time.

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<sup>3</sup> Section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended.

<sup>4</sup> Appellants' Design and Access Statement.

<sup>5</sup> Notwithstanding my reasoning in paragraph 3 of this decision and that equestrian development is not expressly referenced in CS policy CS5.

9. Its form has inevitably softened such that, superficially, it is difficult to tell where human interventions in the landscape begin or end. Likely during the eighth century the hillfort was incorporated in the line of Wat's Dyke. Wat's Dyke, a bund and ditch of variable size, now patchy, runs between the Dee Estuary by Holywell to the River Morda. It is commonly seen as the eastern boundary of the Welsh or Brython kingdoms at that juncture, with the kingdom of Mercia beyond (a precursor to Offa's Dyke).
10. Insofar as relevant to this appeal, the significance of the scheduled monument lies not only in its form, fabric, archaeology, but also its interaction with its surroundings. Significance and landscape are intertwined. That interplay, along with the historic evolution of the scheduled monument and local landform, attests to broader historic and cultural trends.

#### *The proposal*

11. In brief the proposal is for post and rail fencing enclosing an area of about 42 by 25m. The supporting section plan illustrates the proposed construction method.<sup>6</sup> The manège would be created by digging down to provide for surfacing and a stone sub base (separated from each other, and the underlying earth, by geotextile membranes). There would be drainage stones and pipes beneath. Engineering operations fall within the 1990 Act definition of development.
12. Reflecting the slight topographical change through the appeal site, the appellants explain how 'the surface area of the existing arena will need to be levelled on the eastern and southern ends of the site', and that 'the ground levels will need to be raised slightly to match the existing ground levels and these edges will be sloped and grassed'. Posts would appear as about 1.37m above ground level. They would be set within concrete to a depth unannotated on the section plan; a maximum level change of 0.8 metres is, however, indicated.<sup>7</sup> The arena surface would have a muted earth hue and tone.<sup>8</sup>

#### *The effect of the proposal*

13. The list entry explains that the banks and ditches of the hillfort to the north and west are generally better preserved than towards the south. There have been various changes in the land towards the south of the hillfort and east of the two sections of Wat's Dyke in the past few centuries. Those include the planting of trees around the hillfort itself (commensurate with certain landscaping philosophies of the mid-nineteenth century).
14. Parts of Llwyn Coppice further southwards beyond the site were, around the late nineteenth century, worked as a gravel pit. There is now a playground there. A pond is also shown by the track referred to above in the Ordnance Survey ('OS') map of 1875, over the line of Wat's Dyke. The track is now flanked by power lines. I am told a water main also runs by it. Old Port Cottage is shown on the OS map of 1926, as is residential development projecting further northwards of Oswestry at that juncture than previously. Manèges and other equestrian facilities are not uncommon in rural and semi-rural areas. The

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<sup>6</sup> Plan No. RB-MZ746-03.

<sup>7</sup> Appellants' statement of case, section 5.2.

<sup>8</sup> As described in paragraph 2.3 of the appellants' statement of case with a sample photograph provided.

appellants have drawn my attention to a scheme permitted by the Council for a comparably-sized manège at Nant Lane.<sup>9</sup>

15. However neither that different elements of the hillfort are differently preserved, nor the presence of 'modern' interventions in the landscape, justify allowing development that would undermine significance. Many of the interventions referenced immediately above, utilities, a playground, and housing are types of development with associated public benefits (albeit that there is no evidence before me of the circumstances that led to their establishment, and many appear to pre-date modern planning).
16. Furthermore, in my view, the appeal site and its surrounding landscape retain a predominantly rural character. The landscape immediately south of the hillfort and east of Wat's Dyke remain largely open and natural visually. Those would likely have been appropriate descriptors for many centuries if not millennia, regardless of enclosure.<sup>10</sup> I saw that the Llwyn Coppice playground is nestled within mature trees such that it does not significantly affect those qualities. On account of the topography, Llwyn Coppice around the crest of another glacial mound, and the winding route of Llwyn Road, there is little sense of being near Oswestry (notwithstanding visibility from atop the hillfort).
17. Inherent in my reasoning above, being principally rough grass, the site contributes positively to what appears as an essentially natural landscape character (albeit in small measure on account of its size). By extension at present it contributes positively to the landscape setting of the scheduled monument, which is an important part of significance. I was unable to identify other manèges in the immediate vicinity, or indeed similarly significant development attributable to the last few decades. The Nant Lane scheme falls several miles away from the hillfort as opposed to several metres.
18. The proposal would inherently be a staunchly geometric, regular feature. It would be formed of imported and engineered materials, inconsistent with the way in which the form of the scheduled monument arose and evolved over time. Although the landscape here has been altered by human intervention historically, that intervention has softened over the centuries such that it is difficult to see the differentiation between the two. As reasoned above the surroundings to the south of the hillfort and east of the sections of Wat's Dyke have a principally natural, organic and soft-edged character.
19. The proposal would furthermore artificially subdivide existing field parcels which reflect a long historic continuity. Neither the fencing proposed, nor the appearance of the manège surface would change with the seasons, as would be the case of much of the surroundings. For the foregoing reasons, setting aside use, the proposal would represent a discordant intervention in the setting of the scheduled monument, detracting from significance. I therefore disagree with the appellants' position that the low or very low impacts ascribed to the scheme would not result in adverse effects to significance.<sup>11</sup> That is a matter of judgement; different individuals taking account of the same matters may rationally come to different perspectives.

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<sup>9</sup> Planning permission ref. 21/01813/FUL.

<sup>10</sup> As noted in correspondence of 25 May 2021 from Trysor on behalf of the appellants, with reference to the date of enclosure in the area referenced in the Shropshire Landscape Typology Study of 2006.

<sup>11</sup> As referenced in the Trysor correspondence of 14 February 2022 on behalf of the appellants.

20. The Council indicate that the site has 'moderate to high archaeological potential'. The HEA indicates that the nature of the site's surroundings is suggestive of 'a high archaeological potential'.<sup>12</sup> Archaeological remains are rarely confined to neat areas, and even minor disturbance may be harmful owing to the importance of context to understanding.<sup>13</sup> The list entry states that the landscaping of the Llwyn Coppice playground, and also the pond referred to above, will have modified the archaeological remains present. That reinforces the foregoing reasoning in terms of the potential for archaeological remains to be located here.
21. In that context the proposal would represent a fairly significant physical intervention in the land. Excavation of up to 0.8m in depth has, in my view, clear potential to adversely affect archaeological interest which may contribute to the understanding of the significance of the scheduled monument in its wider context. Some mitigation could be achieved by way of an appropriately-worded condition (were the proposal acceptable as a whole).
22. However there is little substantive evidence before me related to the archaeological potential at the site itself as opposed to indications drawn from the wider area. I am told that no archaeological finds were identified in the construction of the water main. However there is no indication of how that main was laid, its depth or size, or to what extent it interacted with the former construction of the track by it. I cannot therefore rule out adverse effects to ecological interest on the basis of the evidence before me, even were I to impose such a condition.

### *Consideration*

23. Drawing together my reasoning, the proposal would represent an incongruous, geometric and artificial intervention in a landscape characterised principally by its natural, open and organic character (which honestly attests to a complex and extensive historic evolution). Consequently, and also on account of potential disturbance to archaeological interest, the proposal would be detrimental to the setting and significance of the scheduled monument. As significance and landscape character are intertwined, the proposal would thereby conflict with the relevant provisions of the development plan policies and provisions of the NPPF set out in paragraphs 5 to 6 of this decision.

### *The planning balance*

24. As referenced above the site is a small part of the setting of the scheduled monument, a setting which has been altered more recently in ways which do not contribute to significance. To some extent the muted tone and hue of the proposal relative to what may be undertaken here in any event would moderate landscape effects. Archaeological impacts could be reduced by way of condition, if not avoided altogether.
25. In that context the proposal may fairly be described as resulting in less than substantial harm. Nevertheless NPPF paragraph 200 makes clear that any harm should require 'clear and convincing justification'. Paragraph 202 further sets out that where a development proposal will lead to less than substantial harm

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<sup>12</sup> Paragraph 1.6, noting paragraph 11.10 also.

<sup>13</sup> Planning Practice Guidance, reference ID: 18a-041-20190723.

to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

### *Planning balance*

26. I acknowledge the importance of suitable facilities for exercising horses, for lungeing in particular. 'Natural' land may be unsuitable or unsafe for certain activities at certain times, for both horses and riders. The proposal would clearly improve the site, and the land associated with Old Port Cottage, in respect of keeping horses. However that is essentially a private benefit.
27. The appellants have suggested that vegetation clearance could be undertaken to better reveal the two sections of Wat's Dyke within their ownership. There is a further suggestion of the installation of an interpretation panel.<sup>14</sup> However I have set out above that historic significance is not just embodied in the original nature of the scheduled monument, but that changes over time honestly attest to history. The scheduled monument is fundamentally part of the land, and has softened into its landscape context.
28. There is nothing to suggest that vegetation clearance would improve an appreciation of significance in terms of historic accuracy, or some former state, albeit I accept that it may do purely in terms of legibility. Moreover vegetation clearance, or the installation of an interpretation panel, are not dependent on the proposal before me. Although the latter may aid an understanding of history to those who happen upon the area, it would do nothing to offset or mitigate the effects of the manège as reasoned above. Neither the public benefits of the scheme, nor any other relevant matters, are sufficient to outweigh the harm that would result.

### **Conclusion**

29. For the above reasons, having taken account of the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should be dismissed.

*Tom Bristow*  
INSPECTOR

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<sup>14</sup> Noting NPPF paragraph 206 in that context.