

# AGENDA ITEM



Committee and date

16th January 2024

## Development Management Report

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

### Summary of Application

<b>Application Number:</b> 23/04035/FUL	<b>Parish:</b>	Craven Arms
<b>Proposal:</b> Extension of existing water culvert		
<b>Site Address:</b> Euro House Dale Street Craven Arms Shropshire SY7 9PA		
<b>Applicant:</b> Euro Quality Lambs		
<b>Case Officer:</b> Elizabeth Attwood	<b>email:</b> <a href="mailto:elizabeth.attwood@shropshire.gov.uk">elizabeth.attwood@shropshire.gov.uk</a>	

**Grid Ref:** 343543 - 282757



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**Recommendation:- Refuse**

## Recommended reason for refusal

1. The proposed development contravenes the provisions of Shropshire Council's adopted Core Strategy 2011 policy CS18 (Sustainable Water Management), which seeks to prevent culverting of watercourses due to the potential for blockages and flooding grounds, Government guidance at paragraph 173 of the NPPF 2023 which seeks to ensure that planning applications do not lead to increased flood risk elsewhere and Policy 6 of the Council's Local Flood Risk Management Strategy which seeks to preserve watercourses in their natural state. The arguments advanced in respect of improved internal vehicular access/movement around the site, improved highway safety, no harm to biodiversity, the offer of a Unilateral Undertaking, and future redevelopment of the site do not outweigh the conflict with adopted planning policy in respect of watercourses. In addition, although the FRA identifies the flood risk to the existing site, it has not adequately considered the impacts of the proposed development in terms of flooding to third party land.

## REPORT

### 1.0 THE PROPOSAL

- 1.1 The proposal entails an engineering operation to culvert the watercourse for a length of up to 90 metres. Construction details are submitted showing a 1350mm diameter High Density Polyethylene (HDPE) pipe installed in granular material which is then covered with subbase material. The block plan shows that the culvert and the area either side of its embankment will also be infilled and surfaced with concrete.
- 1.2 The applicant has confirmed that the existing animal crossing bridge which is used to run the sheep from the lairage (storage/resting area prior to slaughter) to the abattoir is in a poor state and needs replacing. So, whilst this is being undertaken the plan is to culvert the full length of the open watercourse. The area will then be used to provide an improved HGV and forklift truck access/manoeuvring through the site (which is currently dissected by the watercourse), and to store and park containers/trailers.
- 1.3 This is the same proposal which was submitted under 21/03652/FUL. The application was withdrawn rather than be refused for several reasons, including;
- objections from the Council's Drainage team who advised that such schemes cannot be supported unless there is no reasonable alternative, e.g. where a new road or railway embankment is to cross a watercourse.
  - ecology issues.
  - the withdrawal of the associated Ordinary Watercourse Consent, rather than it be refused.

1.4 Application 22/02687/FUL for the same development was subsequently submitted and refused on 20.09.22 for the following reasons;

1. *The proposed development is considered unacceptable on the grounds that culverting the watercourse has the potential to result in blockages and flooding. This is not considered acceptable and contravenes the provisions of policy CS18 (Sustainable Water Management) requires that developments integrate measures for sustainable water management to reduce flood risk.*
2. *It is considered that the proposal should be accompanied by a site-specific flood risk assessment. Without a site-specific flood risk assessment the proposal cannot be assessed in relation to paragraphs 164 and 168 of the National Planning Policy Framework 2021 which are applicable for the proposed development which is in a flood risk area.*

## **2.0 SITE LOCATION/DESCRIPTION**

2.1 The planning application relates to a watercourse and its embankment which runs in a north/south direction through an abattoir premises. The area either side of watercourse is used for vehicle movements in connection with the abattoir. To the north the water course runs under the public highway (B4368). The River Onny is in close proximity to the south.

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

3.1 In accordance with the constitution this application has been concluded by Committee Chair to be determined by planning committee due to objections from the parish councils based on material planning reasons which cannot reasonably be overcome by negotiation or the imposition of conditions and the team manager/principal planning officer in consultation with the Chair agrees that the parish council has raised material planning issues and that the application should be determined by committee.

## **4.0 Community Representations**

### **Consultee Comment**

Drainage & SUDS - Object in principle. In additional, although the FRA identifies the flood risk to the existing site, it has not adequately considered the impacts of the proposed development in terms of flooding to third party land.

SC Regulatory Services - no adverse comments.

SC Ecology - no objection subject to conditions and informatives to ensure the protection of wildlife and to provide ecological enhancements under NPPF, MD12 and CS17.

SC Highways DC - no Objection: in principle, it should be noted that the application has minor implications to the adopted highway. However, if the developer finds highway drainage connections within the proposed culvert, it will be the applicant's responsibility to notify SC highways authority with details and proposals.

## Public Comments

Craven Arms Town Council - objects to the application as it is against current Shropshire Council Policy.

A Site Notice has publicised the application; No representations have been received.

## 5.0 THE MAIN ISSUES

Principle of development

Highway safety

Ecology

Other Matters

Ordinary Watercourse Consent (OWC) under the Land Drainage Act 1991

## 6.0 OFFICER APPRAISAL

6.1 Principle of development

6.1.1 Government guidance at paragraph 173 of the NPPF 2023 states that;

*'When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere.'*

Shropshire Council Policy CS18 (Sustainable Water Management) states that;

*'Developments will integrate measures for sustainable water management to reduce flood risk, avoid an adverse impact on water quality and quantity within Shropshire, including groundwater resources, and provide opportunities to enhance biodiversity, health and recreation.'*

Inter alia, this includes;

- *New development improves development drainage by opening up existing culverts where appropriate.*

6.1.2 The supporting text of policy CS18 states at paragraph 7.16:

*Development can result in culverted watercourses which have the potential to become blocked by debris during periods of high river flows, reduce natural habitats, result in the fragmentation or loss of wildlife corridors and impact on green amenity space, reducing recreational opportunities, such as angling and walking. To minimise the impact development has upon the natural water environment, proposals which contribute to the artificial enclosure of watercourses will not be supported. [my emphasis] Where possible, development should contribute to the opening up of existing culverts to improve natural drainage and enhance and conserve Shropshire's water environment as an important asset, in accordance with the objectives of Policy CS17.*

- 6.1.3 The council's Drainage and Flood Risk Manager has advised that the Council does not promote culverting of watercourses. Further, that Ordinary Watercourse Consent is required from Shropshire Council for any works within the channel of the watercourse that will obstruct/affect the flow of the watercourse including temporary works. Thus, there are two separate statutory consents required for the proposed development, being The Town and Country Planning Act 1990 and the Drainage Act 1991.
- 6.1.4 The council's Drainage and Flood Risk Manager has also confirmed that he has made the applicant/agent aware on several occasions that although the Council may approve the construction of small sections of culverts to permit vehicle crossings, it will not support the proposed culverting of the entire length of the watercourse, as this is not in line with the Council policy. The suggestion that this culverting is temporary is also not accepted as although this site may be brought forward for redevelopment in the future, there is no guarantee when this will happen. The alternative option of diverting the watercourse in open channel has been discussed with the applicant, but they have not explored this to date, likewise the culverting of a like for like length of culvert to facilitate the replacement of the existing animal crossing bridge would also likely be supported. In addition, although the FRA identifies the flood risk to the existing site, it has not adequately considered the impacts of the proposed development in terms of flooding to third party land.
- 6.1.5 The council's Drainage and Flood Risk Manager has also offered to give advice on alternative schemes to facilitate improved vehicular access around the site. However, the agent has confirmed that the scheme as submitted is the only one for consideration.
- 6.2 Highway Safety

6.2.1 The Council's Highway Manager has confirmed that there are no objections in principle as the application only has minor implications to the adopted highway. The watercourse does not form part of the adopted highways and its assets, there are no proposals for any highway alterations, the existing HGV access associated with the site is adequate with suitable visibility splays. Therefore, from the highways and transport perspective there is no objection. Moreover, there have been no Personal Injury Accidents within the vicinity of the site.

## 6.3 Ecology

6.3.1 The water vole survey conducted by Churton Ecology (April 2022) found no signs of water vole during the site survey. No further surveys were recommended. SC Ecology has reviewed the information and plans submitted in association with the application and is happy with the survey work carried out. However, SC Ecology require biodiversity net gains at the site in accordance with the NPPF and policy CS17. Therefore, if approved the installation of a bat box and bird boxes to enhance the site for wildlife by providing additional roosting habitat, would be required.

## 6.4 Other Matters

6.4.1 Application 23/00520/FUL - Erection of a livestock lairage building, manure store, formation of vehicular access and internal access roads and infrastructure located at Newington Farm, Shrewsbury Road, Craven Arms was submitted by the same applicant/agent in early February 2023. It was refused on 01.12.23 for the following reasons:

- 1. Insufficient information has been submitted to demonstrate that a satisfactory means of access can be provided to the proposed development without causing a detriment to highway safety or the free flow of traffic along the A49. Specifically, the proposed junction does not conform to The Design Manual for Roads and Bridges (DMRB) and a departure from standard has not been agreed with National Highways. The proposed development therefore fails to accord with Shropshire's Core Strategy policies CS6 and CS8, and Site Allocation and Management of Development Plan policies MD2 and MD8.*
- 2. Insufficient information has been submitted to justify the proposed layout of the development and the implications it would have for a number of significant trees. Successful arboricultural and landscape compensation and mitigation are vital for the sustainable integration of development at this site. Considering the impact upon important trees within the site and the lack of a reasonable justification, mitigation or compensation, the scheme does not represent sustainable development and fails to accord with Shropshire's Core Strategy policies CS6 and CS17, and Site Allocation and Management of Development Plan policies MD2 and MD12.*

- 6.4.2 The agent has suggested a Unilateral Undertaking (UU) to ensure that the culvert is opened up again in the future when the applicant vacates the site, and the site is redeveloped as part of the role of Craven Arms as a Key Centre. Therefore, indicating that this a time limited proposal. However, the planning permission being applied for here is not being made on a temporary basis. Moreover, the above application (23/00520/FUL), which would facilitate the relocation of the abattoir, has recently been refused due to insufficient evidence, despite the passage of 10 months. The applicant has also advised that it may be 3-5 years before they relocate to Newington Farm, once planning permission for the replacement lairage building etc., is approved.
- 6.4.3 Therefore, despite the offer of a UU, the potential for timely re-opening and enhancement of the culvert as part of any future redevelopment and relocation of the abattoir is conjecture at this stage which could not be relied on for the purposes of the assessment of the acceptability of the current proposal.
- 6.4.4 The Council's Drainage and Flood Risk Manager has also advised that any works within the channel of the watercourse that could obstruct or affect the flow of the watercourse even on a temporary basis is not promoted. Again, this weighs against the arguments being put forward here in favour of the development.
- 6.5 Ordinary Watercourse Consent (OWC) under the Land Drainage Act 1991.
- 6.5.1 **Members are respectfully advised that even if they overturn officer recommendation for refusal and approve the application, it cannot be implemented. This is because the applicant will need to obtain an Ordinary Watercourse Consent (OWC) under the Land Drainage Act 1991.**
- 6.5.2 Shropshire Council in their capacity as Land Drainage Authority manage the Ordinary Watercourse Consenting process. The requirement for OWC is set out in Section 23 of the Land Drainage Act 1991. Shropshire Council are opposed to the culverting of entire lengths of watercourses. This policy is set out in the Council's Local Flood Risk Management Strategy Policy 6:

This policy relates to Section 23 of the Land Drainage Act 1991 and states that;

*No person shall:*

- *Erect any mill dam, weir or other like obstruction to the flow of any ordinary watercourse or raise or otherwise alter any such obstruction, or;*
- *Erect any culvert that would be likely to affect the flow of any ordinary watercourse or alter any culvert in a manner that would be likely to affect any such flow.*

6.5.3 In view of this, the Council seeks to preserve the natural state of land drainage systems and minimise the number of man-made alterations to watercourses. Any activity which may affect the flow of an ordinary watercourse will require our formal consent. This applies to both temporary and permanent works. The Council will, therefore, generally be opposed to the culverting of watercourses and the construction of 'in channel' structures, unless there is no reasonable alternative, e.g. where a new road or railway embankment is to cross a watercourse, the use of a culvert may be approved.

NB: Alternatives have been suggested to the applicant/agent, by the Drainage and Flood Risk Manager, however these have not been explored, and as noted in 6.1.5, the agent has confirmed that this is the only proposal to be considered.

6.5.4 As discussed on site with the applicant and his agent, the proposal to culvert the watercourse is to allow the storage of materials associated with the operation of the business and to improve access for HGV traffic and forklift truck movements. Whilst Shropshire Council, acting as the Land Drainage Authority, would not object to the amendment of the existing section of culverted watercourse at the entrance to the site (including the animal crossing bridge), they would not support the culverting of the entire length of the watercourse included in the current redline boundary. Accordingly, if the applicant submits this proposal for OWC, this would be refused.

6.5.5 Should the applicant wish to appeal this decision, the right of appeal for Shropshire Council withholding consent is set out in subsection 5 of Section 23 of the Land Drainage Act 1991, as noted below:

*(5) If any question arises under this section whether the consent of the drainage board concerned is unreasonably withheld, that question shall be referred to a single arbitrator to be agreed between the parties or, failing such agreement, to be appointed by the President of the Institution of Civil Engineers on the application of either party.*

6.5.6 Whilst it is within the applicant's right to appeal this decision, as the Council's position on the culverting of ordinary watercourses is clearly set out in our Local Flood Risk Management Strategy, and is consistent with policy of other LLFA's across the country, The Council's Drainage and Flood Risk Manager is therefore confident that any arbitrator would uphold the Council's decision, and dismiss the appeal.

6.5.7 The applicant/agent have also been made aware that if works to culvert the watercourse take place without OWC, Shropshire Council have the power to serve a Notice under Section 24 of the Land Drainage Act 1991 requiring them to abate the nuisance within a specified time. Should the applicant fail to comply with the Notice, then the Council may take the matter to Court. Alternatively, the Council may take steps themselves to abate the nuisance and recover the expenses incurred from the applicant.



## 7.0 CONCLUSION

Given the previous advice of the Council's Land Drainage Officer and the advice from the Council's Drainage and Flood Risk Manager it is considered that the proposal contravenes the provisions of Shropshire Council adopted Core Strategy 2011 policy CS18 (Sustainable Water Management), which seeks to prevent culverting of watercourses due to the potential for blockages and flooding grounds, Government guidance at paragraph 173 of the NPPF 2023 which seeks to ensure that planning applications do not lead to increased flood risk elsewhere and Policy 6 of the Council's Local Flood Risk Management Strategy which seeks to preserve watercourses in their natural state. The arguments advanced in respect of improved internal vehicular access/movement around the site, improved highway safety, no harm to biodiversity, the offer of a Unilateral Undertaking, and future redevelopment of the site do not outweigh the conflict with adopted planning policy in respect of watercourses. Therefore, it is recommended that the application is refused.

## 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  
National Planning Practice Guidance

Shropshire Core Strategy policies:  
CS6 Sustainable Design and Development Principles  
CS17 Environmental Networks  
CS18 Sustainable Water Management

SAMDev Plan  
MD2 Sustainable Design  
MD12 Natural Environment.

### RELEVANT PLANNING HISTORY:

# AGENDA ITEM

- 16th January 2024

Euro House

SS/1988/1134/P/ Use of land as a vehicle turning and parking area. PERCON 23rd January 1989

SS/1979/258/P/ Erection of extensions and formation of a vehicular access. PERCON 25th July 1979

SS/1976/498/O/ Erection of a slaughter hall extension and new lairage, formation of new vehicular access. PERCON 15th March 1977

SS/1976/498/R/ Erection of a slaughter hall extension and new lairage, formation of new vehicular access and alteration of existing vehicular access. PERCON 7th April 1978

SS/1976/475/P/ Installation of a 3000 gallon underground blood tank. PERCON 19th November 1976

SS/1976/458/P/ Erection of a Portakabin office unit. PERCON 28th October 1976

SS/1975/486/P/ Erection of an extension to existing abattoir complex to provide improved outloading facilities for meat. PERCON 8th January 1976

SS/1975/485/P/ Erection of an extension to existing abattoir complex to provide additional chilling accommodation for meat storage. PERCON 8th January 1976

21/03652/FUL Works to culvert a watercourse through factory grounds WDN 8th December 2021

22/02687/FUL Works to culvert a watercourse through factory grounds REFUSE 20th September 2022

## 11. Additional Information

View details online: <http://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=S0XRLRTDK1P00>

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
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Cabinet Member (Portfolio Holder) - Councillor Chris Schofield
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Local Member
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Cllr David Evans

Cllr Hilary Luff

Appendices
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Recommended reason for refusal;

# AGENDA ITEM

- 16th January 2024

Euro House

1. The proposed development contravenes the provisions of Shropshire Council's adopted Core Strategy 2011 policy CS18 (Sustainable Water Management), which seeks to prevent culverting of watercourses due to the potential for blockages and flooding grounds, Government guidance at paragraph 173 of the NPPF 2023 which seeks to ensure that planning applications do not lead to increased flood risk elsewhere and Policy 6 of the Council's Local Flood Risk Management Strategy which seeks to preserve watercourses in their natural state. The arguments advanced in respect of improved internal vehicular access/movement around the site, improved highway safety, no harm to biodiversity, the offer of a Unilateral Undertaking, and future redevelopment of the site do not outweigh the conflict with adopted planning policy in respect of watercourses. In addition, although the FRA identifies the flood risk to the existing site, it has not adequately considered the impacts of the proposed development in terms of flooding to third party land.