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# Appeal Decision

Site visit made on 2 April 2024

**by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE**

an Inspector appointed by the Secretary of State

Decision date: 22 April 2024

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**Appeal Ref: APP/L3245/W/23/3328198**

**Land rear of 2 Spring Cottages, Hook-a-Gate, Shrewsbury, Shropshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Graham Gordon against the decision of Shropshire Council.
  - The application Ref 22/05688/FUL, dated 19 December 2022, was refused by notice dated 6 March 2023.
  - The development proposed is the erection of 1No. dwelling following demolition of garage and outbuildings/sheds.
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## Decision

1. The appeal is allowed and planning permission is granted for the erection of 1No. dwelling following demolition of garage and outbuildings/sheds on land rear of 2 Spring Cottages, Hook-a-Gate, Shrewsbury, Shropshire in accordance with the terms of application Ref 22/05688/FUL, dated 19 December 2022, subject to the attached schedule of conditions.

## Application for costs

2. An application for costs was made by Mr Graham Gordon against Shropshire Council. This application is the subject of a separate Decision.

## Procedural matter

3. Prior to my determination of this appeal, the Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023 which replaced the previous version. I have taken into account the relevant provisions of the revised version in the determination of the appeal and any references to the Framework in this decision relate to the revised document. In having regard to the matters that are most relevant to this appeal, there are no material changes to the Framework of relevance to the substance of this appeal. Therefore, I am satisfied that no party to this appeal would be prejudiced by the changes to the national policy context.

## Main Issues

4. The main issues are:
  - The effect of the proposed development on the character and appearance of the surrounding area.
  - The effect of the proposed development on highway safety and the free flow of traffic.

## Reasons

### *Character and appearance*

5. The appeal site comprises a relatively unkempt parcel of land located to the rear of several residential properties on Longden Road and is occupied by a garage and a number of dilapidated smaller outbuildings. Access to the site is via a relatively narrow private lane located off Longden Road and is facilitated by a 'T' junction positioned between residential properties comprising 'The Lilacs' and 'Ashdene'. The lane also provides access to a residential property ('The Prill') located to the north-west of the appeal site and also forms part of the route of a public footpath.
6. The immediate surrounding area comprises a variety of single and two storey dwellings. These have varying design styles, construction ages and plot sizes. As such, the surrounding area does not display any cohesive or dominant design character.
7. The proposed development would involve the construction of a detached two-storey dwelling with an additional floor of accommodation in the roof space. Due to the sloping nature of the site, the dwelling would be of split-level design with the rear elevation appearing as single storey. The majority of the land to the front of the proposed dwelling would comprise of a parking/manoeuvring area providing parking for two vehicles. The Council identifies that the principle of residential development on this windfall site is acceptable.
8. In being located between residential development comprising 'The Prill', 'Ashdene' and 'The Lilacs', the proposed dwelling would be read as part of the existing settlement. Owing to the local topography and existing development, it would largely be screened in views from Longden Road. Whilst it would be visible in views from the countryside in the vicinity of Rea Brook, it would be seen in the context of existing development. Consequently, I consider that the principle of residential development on the appeal site would be acceptable.
9. Given the varied nature of construction styles in the locality, the proposed design of the dwelling would not be inappropriate within the context of its setting, nor would it appear as an incongruous form of development. Although accommodation in the roof space is proposed, taking into account the local topography which generally slopes to the north-west, the overall ridge height of the dwelling would likely be set below some of the first-floor windows on two storey properties fronting Longden Road. Furthermore, given the varied nature of the scale, mass and height of the properties in the settlement, I do not consider that the height of the proposed dwelling would appear unacceptably excessive or out of context with its surroundings.
10. The overall footprint and plot size is generally comparable with nearby existing development, particularly the detached properties located immediately to the south-east of the appeal site. In my view, the appeal site is of sufficient size to accommodate the footprint of the proposed dwelling without causing the proposal to appear cramped or materially out of character with the density of nearby development.
11. Taking the above factors into account, I do not consider that the proposal would result in a cramped form of development and would not cause any material harm to the character and appearance of the surrounding area.

Consequently, there would be no conflict with Policy CS6 of the Shropshire Council Core Strategy (Core Strategy) and Policy MD2 of the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan.

*Highway safety*

12. The application provides for on-site parking, manoeuvring and the provision of visibility arrangements between the site and the junction with the private lane. However, no modifications are proposed to the access arrangements between the lane and Longden Road.
13. There is some dispute between the main parties regarding the use of the appeal site for the parking of vehicles. The Appellant contends that the site is used for the parking of two to three works vans in connection with his business and was previously used as the garage and parking area for the occupants of No. 2 Spring Gardens until the site was split from that property in 2018. As such, it is contended that the Appellant and family have use the lane for vehicular access for at least 65 years and will continue to do so whilst the site remains in the Appellant's ownership, including for the parking of works vans, until such time as the site is redeveloped.
14. The Council considers that the parking use has never been formalised through the submission of a planning application or a certificate of lawfulness. As such, the Council contend that the site does not have a formal parking use and that a new dwelling would intensify the use of the access onto Longden Road which should be configured to meet current highway standards.
15. The Council's Highways Officer raised no objections to the proposed development and commented that the submission has satisfactorily addressed the proposed on-site parking, turning provision and visibility along the lane. The Officer further identified that, although the junction with the lane and Longden Road is not ideal in terms of layout and restricted visibility, the proposed residential development is unlikely to materially increase vehicular activity over that which can reasonably be expected from the full utilisation of the garage.
16. The Council assert that the comments of the Highways Officer was on the understanding that the site already had a parking use and therefore a new dwelling would have no material change in trip generation utilising the site. However, as the parking use is disputed, it is contended that insufficient information has been provided to demonstrate a safe means of access off Longden Road.
17. Although no vehicles were parked on the appeal site at the time of my site visit, given the age of the existing garage and the evidence of the Appellant, it seems apparent that the site has been previously used for parking for some time. Furthermore, I have no evidence to suggest that the site may not now be used for the parking of vans or that the Council has taken any action to secure the cessation of such use. There is no other compelling evidence to suggest that the parking use has been formally abandoned. On the basis of the evidence before me, it seems reasonable to conclude that the appeal site has historically been used for parking and continues to be used as such.
18. In these circumstances, I have attached substantial weight to the views of the Council's Highways Officer and the evidence provided in the Appellant's Access

Statement. The Appellant's view that the proposed development would likely generate around three vehicle movements in and out of the site per day is reasonable. The level of traffic that currently uses the appeal site associated with the current van parking is broadly the same as that which would likely be generated by the proposed development. As such, the impact of the proposed development on traffic movements along the lane would likely be neutral.

19. I have taken into account the fact that there have been no recorded injury accidents at the junction, or indeed within Hook-a-Gate, in the previous five years. I also have no evidence to suggest that there have been any non-injury accidents at the junction. The existing level of traffic using the appeal site would be similar to that associated with the proposed development. I have also taken into account the concerns of nearby residents that the junction should be reconfigured to meet appropriate visibility standards. However, taking the above factors into account, I consider that it would be unreasonable in this case to require any works to reconfigure the junction of the lane with Longden Road.
20. I accept that visibility to the south-west of the junction is partially compromised by the boundary wall and planting at 'The Lilacs'. I have taken into account the 30mph speed limit of Longden Road, the fact that the junction bell mouth is relatively wide and the fact that there would be no material change in the likely number of vehicular movements. The width of the bell mouth would enable some degree of manoeuvring to occur to enable some vehicles to pass one another thereby minimising the risk of vehicles having to wait on Longden Road to turn into the site in circumstances where another vehicle was emerging. These factors collectively contribute to my view that the proposed development would not result in any severe highway safety or traffic implications, nor would it have any material effect on the safety of pedestrians using the public footpath.
21. For the above reasons, I consider that the proposed development would not be materially detrimental to highway safety or the free flow of traffic on Longden Road. Consequently, there would be no conflict with Policies CS6, CS7 and CS8 of the Core Strategy and Policy MD2 of the SAMDev Plan.

#### *Other matters*

22. The proposed development would make a modest contribution to housing supply in the County to which I have attached moderate weight. I have also taken into account the concerns of nearby residents regarding the effect of construction traffic on the use of the lane. The impact of construction works on the lane and any environmental and amenity impacts arising from such works can be made the subject of an appropriately worded planning condition.
23. In addition, I have taken into account the concerns raised by Longden Parish Council and a number of local residents regarding, amongst other things, flood risk, loss of privacy, infrastructure capacity and the impact on nature conservation. Although these matters have been carefully considered, they do not alter the main issues which have been identified as the basis for the determination of this appeal, particularly in circumstances where the Council's reasons for the refusal of planning permission does not identify any objection to the appeal scheme for these other reasons.

24. The Appellant has drawn my attention to a previous planning application, submitted in 2021, for the construction of a single dwelling (Ref: 21/04948/FUL) on the appeal site. Although I do not have full details of the previously refused planning application, the Appellant's Statement includes site plans showing layout comparisons of the appeal proposals and the previous scheme. It is clear that the overall footprint of the proposed dwelling has been slightly reduced from that proposed previously.
25. Whilst I have no evidence of the elevational design of the previous scheme, the Appellant indicates that the appeal proposal will no longer provide for a garage. The frontage of the proposed dwelling now also provides for a significant area of parking and manoeuvring space. As such, there are clear material differences between the previous scheme and the appeal proposal, particularly in relation to its appearance from the access lane and in relation to the extent of parking/manoeuvring areas. As such, I have attached little weight to the design of the previous scheme and I have determined this appeal on its own individual merits.

### **Conditions**

26. I have considered the proposed planning conditions, including a number of pre-commencement conditions, that have been provided by the Council. I have considered these against the advice given in paragraph 56 of the Framework and the guidance contained in the section on 'Use of Planning Conditions' in the PPG. Where necessary I have amended them in the interests of clarity, precision, conciseness or enforceability. I have also deleted two of the suggested conditions for the reasons given below.
27. In addition to the standard time limit, I have imposed a condition (No. 2) relating to the approved plans in the interests of certainty.
28. In order to ensure the satisfactory drainage of the site and to avoid the development contributing to flood risk, a condition requiring the submission and implementation of details of surface water drainage is necessary (No. 3). The submission of a mine gas assessment is also necessary to ensure that risks from potential mine gases to the future occupiers of the development are minimised, and to ensure that the development can be carried out safely (No. 4).
29. A condition is necessary requiring the submission of a construction environmental management plan in order to minimise the effect of the proposed development on nature conservation interests (No. 5). Conditions are also necessary to provide roosting and nesting opportunities for birds and bats and to minimise the disturbance to bats as a consequence of external lighting (Nos. 6 and 7).
30. The Council has suggested the imposition of two planning conditions that relate to highway matters. These provide for the submission of a plan showing full visibility splays for the access onto Longden Road and the submission of an access scheme to demonstrate how vehicles can access the site without waiting on the highway adjacent to the access (suggested conditions Nos. 8 and 9). These conditions were not recommended in the consultation response from the Highways Officer on behalf of the Council in its role as Highway Authority. Given my findings above, the planning circumstances in this case suggest that it would be unreasonable to require works to reconfigure the junction of the

private lane with Longden Road. Consequently, I have deleted the suggested conditions.

31. The submission and approval of a Construction Management Plan is necessary to safeguard the living conditions of local residents and in the interests of highway safety (No. 8). However, I have amended the suggested condition to include additional measures to safeguard living conditions and minimise the risk to highway safety during construction works.
32. In order to ensure that vehicles can satisfactorily access the site from the lane and ensure adequate provision of parking facilities, in the interests of highway safety, a condition is necessary requiring the implementation of the submitted details provided on 'Proposed Access Plan Drawing No. 010' (No. 9). A condition is also necessary requiring the submission of an updated Arboricultural Impact Assessment in order to minimise the effect of the development on existing trees and make suitable provision for compensatory measures (No. 10).
33. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national Permitted Development rights unless there is clear justification to do so. However, I have considered the relationship of the appeal site to adjacent development and the countryside to the northwest. Extensions or buildings in the curtilage of the dwelling could have an impact on the character and the appearance of the surrounding area. As such, a condition is considered to be reasonable to restrict development within the curtilage of the proposed dwellinghouse (No.11).

### **Conclusion**

34. For the above reasons, taking into account the development plan as a whole based on the evidence before me and all other matters raised, I conclude that the appeal should be allowed.

*Stephen Normington*

INSPECTOR



### **CONDITIONS SCHEDULE**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development shall be carried out strictly in accordance with the approved drawings and documents and the following approved plans:
  - 0002/001 Location Plan
  - 0002/002 C Existing and Proposed Block Plans
  - 0002/003 E Existing and Proposed Site Plan
  - 0002/004 B Block Plan Levels
  - 0002/030 C Proposed Basement and GF Plans
  - 0002/031 D Proposed Loft and Roof Plan
  - 0002/040 C Proposed Elevations
  - 0002/050 C Proposed Section AA
  - Drawing 010 Proposed Access

#### **Drainage**

- 3) Prior to the commencement of development, a scheme of surface water drainage shall be submitted to, and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented before the dwelling is first occupied.

#### **Mine Gas Risk Assessment**

- 4) a) No development, with the exception of demolition works where this is for the reason of making areas of the site available for site investigation, shall take place until a mine gas risk assessment has been undertaken to assess the potential for mine gases to exist on the site. The mine gas risk assessment shall be undertaken by a competent person as defined in the National Planning Policy Framework and conducted in accordance with CL:AIRE - Good Practice for Risk Assessment for Coal Mine Gas Emissions; October 2021 and having regard to current Environment Agency guidance Land Contamination: Risk Management (LCRM; 2020). The Report is to be submitted to and approved in writing by the Local Planning Authority before development commences.
  - b) In the event of the mine gas risk assessment finding the site to be affected by mine gases a further report detailing a Remediation Strategy shall be submitted to and approved in writing by the Local Planning Authority. The Remediation Strategy must have regard to current guidance and standards and ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
  - c) The works detailed as being necessary to make safe the mine gases shall be carried out in accordance with the approved Remediation Strategy.
  - d) In the event that further contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of the Environment Agency guidance Land Contamination: Risk Management (LCRM; 2020), which is subject to the approval in writing by the Local Planning Authority.

e) Following completion of measures identified in the approved remediation scheme, a Verification Report shall be submitted to and approved in writing by the Local Planning Authority that demonstrates the risks from mine gases and any contamination identified has been made safe, and the land no longer qualifies as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land. Verification must be in accordance with current guidance and standards.

**Construction Environmental Management Plan**

5) Prior to the commencement of development (including demolition, ground works and vegetation clearance), a Construction Environmental Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include:

a) An appropriately scaled plan showing Wildlife/Habitat Protection Zones where construction activities are restricted, where protective measures will be installed or implemented;

b) Details of protective measures (both physical measures and sensitive working practices) to avoid impacts during construction;

c) Requirements and proposals for any site lighting required during the construction phase;

d) A timetable to show phasing of construction activities to avoid harm to biodiversity features (e.g. avoiding the bird nesting season);

e) The times during construction when an ecological clerk of works needs to be present on site to oversee works;

f) Identification of Persons responsible for:

i) Compliance with legal consents relating to nature conservation;

ii) Compliance with planning conditions relating to nature conservation;

iii) Installation of physical protection measures during construction;

iv) Implementation of sensitive working practices during construction;

v) Regular inspection and maintenance of physical protection measures and monitoring of working practices during construction;  
and

vi) Provision of training and information about the importance of Wildlife Protection Zones to all construction personnel on site.

g) Pollution prevention measures.

All construction activities shall be implemented strictly in accordance with the approved plan.

**Bat And Bird Boxes**

6) Prior to the first occupation of the dwelling hereby approved, the makes, models and locations of bat and bird boxes shall be submitted to and approved in writing by the Local Planning Authority. The following boxes shall be erected on the site:



- A minimum of 1 external woodcrete bat box or integrated bat brick, suitable for nursery or summer roosting for small crevice dwelling bat species.
- A minimum of 3 swift bricks.
- A minimum of 2 hedgehog boxes.

Swift bricks should be positioned: 1) Out of direct sunlight; 2) At the highest possible position in the buildings wall; 3) In clusters of at least three; 4) 50 to 100cm apart; 5) Not directly above windows; 6) With a clear flightpath to the entrance; and 7) North or east/west aspects preferred. (See <https://www.swift-conservation.org/Leaflet%204%20%20Swift%20Nest%20Bricks%20-%20installation%20&%20suppliers-small.pdf>).

The boxes shall be sited in suitable locations, with a clear flight path and where they will be unaffected by artificial lighting. The boxes shall thereafter be maintained for the lifetime of the development.

### **Lighting Plan**

- 7) Prior to the erection of any external lighting on the site, a lighting plan shall be submitted to and approved in writing by the Local Planning Authority. The lighting plan shall demonstrate that the proposed lighting will not impact upon ecological networks and/or sensitive features. The submitted plan shall be designed to take into account the advice on lighting set out in the Bat Conservation Trusts Guidance Note 08/18 Bats and artificial lighting in the UK. The development shall be carried out strictly in accordance with the approved details and thereafter retained for the lifetime of the development.

### **Construction Management Plan**

- 8) No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to, and approved in writing by the Local Planning Authority. The Plan shall provide for:
  - i) The submission of a Traffic Management Scheme for the management of construction traffic to ensure that any obstruction to the private lane and access with Longden Road is minimised;
  - ii) the parking of vehicles of site operatives and visitors;
  - iii) loading and unloading of plant and materials;
  - iv) storage of plant and materials used in constructing the development;
  - v) the erection and maintenance of security hoarding, where appropriate;
  - vi) measures to ensure the prevention/removal of mud and other deleterious material arising from construction works on the site from being deposited on the private lane and the public highway;
  - vii) measures to control the emission of dust and dirt during construction;
  - viii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - ix) delivery, demolition and construction working hours;
  - x) a community communication protocol.

The approved Construction Management Plan shall be adhered to in full throughout the construction period for the development.

**Access, Parking, Turning**

- 9) Prior to the first occupation of the dwelling hereby permitted, the access, parking and turning areas as detailed within the Access Statement, Proposed Access Plan Drawing No. 010, shall be provided in full and shall thereafter be retained for use only as parking and turning areas.

**Arboricultural**

- 10) Prior to the commencement of development, an updated Arboricultural Impact Assessment shall be submitted to and approved in writing by the Local Planning Authority. The Assessment shall assess the level and impact of tree loss and propose mitigation for any loss. The development shall thereafter be undertaken in accordance with the approved Assessment.

**Removal of permitted development rights**

- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no development relating to Schedule 2 Part 1 Classes A, AA, B, C, E and G shall be erected, constructed or carried out without consent from the Local Planning Authority.