



Committee and Date
Northern Planning Committee
18th June 2024

Development Management Report

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

Summary of Application

Application Number: 24/01471/FUL	Parish:	Selattyn And Gobowen
Proposal: Change of use of non-domestic area into domestic area for parking and turning together with new vehicular access		
Site Address: Land Adjacent The Bryn Rhosygadfa Gobowen Oswestry Shropshire		
Applicant: Mr Michael Davies		
Case Officer: Janet Davies	email: janet.davies@shropshire.gov.uk	

Grid Ref: 332029 - 334542

Shropshire Council

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Recommendation:- Grant Permission subject to the conditions as set out in Appendix 1.

REPORT

1.0 THE PROPOSAL

1.1 Planning consent is sought for the change of use of a non-domestic area into residential curtilage area for parking and turning together with new vehicular access at The Bryn, Rhosygadfa, Gobowen, Oswestry.

1.2 The application follows on from previous planning refusals on this site (22/01859/FUL, 23/02122/FUL) for a new vehicular access to replace the existing access, which also included for a proposed garage with storage facility. The latter is now removed from the current proposed scheme.

1.3 The refusal reason for the most recent application (23/02122/FUL) included the following justification:

'... the proposal site is located outside of the original domestic curtilage for the property and as such the proposal would result in an encroachment into presently undeveloped land, in contravention of both CS5 and CS17 of the Core Strategy which seek to control development in the countryside. The enlarged curtilage would undermine the vitality and character of the surrounding landscape, having a significant alteration to the site and its wider context; failing to sympathise and respect the surrounding built and natural environment as is required under CS6 and MD2....'

1.4 The previous 2023 application had included an entire field within the red line on the location plan, measuring approximately 7500msq.

1.5 The site area currently under consideration now relates to a smaller parcel of the field measuring around 440msq. This is confined to an area immediately adjacent to the existing building group.

2.0 SITE LOCATION/DESCRIPTION

2.1 The affected area of land and site of the proposed new access drive is located to the west of The Bryn, Rhosygadfa and affects an existing stretch of laurel hedge and to the far side of that an area of level, mown grassland.

2.2 The dwelling house is located close to the corner of two country lanes, one which leads to Gobowen and the other to Hindford. The front elevation of the property faces south. There is a small range of brick built agricultural buildings to the north and a more modern

agricultural building to the north-west. Access is currently gained via a drive between the new and old outbuildings. The property is isolated with no nearby neighbours and surrounded by agricultural land to the west and south.

3.0 REASON FOR DELEGATED DETERMINATION OF APPLICATION

3.1 It is considered that material planning reasons have been raised by the Parish Council contrary to the officer recommendation. The application is therefore referred to Committee for determination in accordance with the Scheme of Delegation to Officers as set out in Part 8 of the Shropshire Council Constitution.

4.0 Consultee comments

4.1 SC Highways - No objection subject to the development being constructed in accordance with the approved details and recommended conditions and informative notes.

Further details are contained within the section entitled 'Highways' in the body of the report below.

4.2 SC Drainage – No objection. The development is unlikely to significantly increase flood risk and therefore offer the following informative:

Informative:

Preference should be given to drainage measures which allow rainwater to soakaway naturally. Connection of new surface water drainage systems to existing drains / sewers should only be undertaken as a last resort, if infiltration techniques are not achievable.

Shropshire Council will not permit new connections to the Highway Drainage network.

If non permeable surfacing is used on the driveways and parking areas which slope towards the highway, a drainage system to intercept water prior to flowing on to the public highway must be installed.

4.1 Public comments

4.1.1 Parish Council - The scale of the parking and turning area is considered out of proportion with the needs of a domestic property.

4.1.2 A further 4 support comments have been received, which in summary make the following points:

- This application is for the good and benefit of the local community, current owners and immediate neighbours and will enhance road safety in the area.

- Moving the entrance from near a blind bend and using the existing entrance as a passing place can only help with road safety and benefit pedestrians and vehicle users.
- Vehicles do not always use passing places and are disturbing the verges.
- The gravelled area where current entrance is should also be retained as a 'passing spot' for when vehicles come around the bend.
- Vehicles can get off the road, turn around and re-enter highway near blind corner facing forward.
- The comments from the Parish council do not refer to the change of entrance and are contradictory to previous applications. A house of this size will require significant turning areas for numerous vehicles, including maintenance, domestic and various trailers.

5.0 THE MAIN ISSUES

- Principle of Development
- Details of Proposal
- Highways
- Amenity Impact

6.0 OFFICER APPRAISAL

6.1 Principle of Development

6.1.1 Core Strategy policy CS5 of the adopted Core Strategy requires new development in the countryside to be strictly controlled for the protection and maintenance of the countryside's vitality and character.

6.1.2 Policy CS6 of the Shropshire Core Strategy requires development to protect and conserve the built environment and be appropriate in scale, density, pattern and design taking account of the local context and character. The policy also advises that new development should also safeguard residential and local amenity, ensure sustainable design and construction principles are incorporated within the new development. In addition to this, policy MD2 of the SAMDev builds on policy CS6 dealing with sustainable design principles.

6.1.3 Policy CS17 seeks to protect and enhance the diversity, high quality and local character of Shropshire's natural, built and historic environment, and does not adversely affect the visual, ecological, geological, heritage or recreational values and functions of these assets, their immediate surroundings or their connecting corridors. Policy MD12 similarly seeks to protect the natural environment.

6.2 Details of Proposal

6.2.1 The application site is in an area of countryside where under Core

Strategy Policy CS5, new development will be strictly controlled. CS5 states that development proposals on appropriate sites which maintain and enhance countryside vitality and character will be permitted where they improve the sustainability of rural communities by bringing local economic and community benefits.

- 6.2.2 The proposal scheme involves the extension of the existing domestic curtilage to the west of the existing buildings. This involves the change of use of an area of level, mown grassland, currently forming part of a larger field, with vehicular access gained via a new 5m wide entrance off a straight section of road and necessitating removal of a portion of laurel hedge.
- 6.2.3 The area affected measures approximately 20m by 22m and would provide parking for 4 vehicles. Surface materials would be chippings to match the adjacent area.
- 6.2.4 The stated intention is to create an improved parking and turning area and safer access. The existing yard access to the east, between the outbuildings would be closed off as part of the proposal.

6.3 Highways

- 6.3.1 The Council's Highways team have been consulted on the proposal and observed that as with the earlier submission, the relocation of the property's access further to the west continues to move the point of access away from the sharp bend in the road and increases the line-of-sight traffic side, for the drivers of emerging vehicles. The proposal is considered to provide a highway benefit and is therefore supported.
- 6.3.2 It is advised however that the existing access apron within the highway verge be retained to continue to provide an informal passing opportunity for vehicles travelling along the rural unclassified road.
- 6.3.3 Based upon the information contained within the submitted application it is considered that, subject to the conditions listed being included on any approval, there are no sustainable Highway grounds upon which to base an objection.
- 6.3.4 Highways conditions are recommended to be attached to any planning consent in relation to access, parking, turning, access apron, closure of the existing vehicular access and gates.
- ### **6.4 Amenity Impact**
- 6.4.1 Following concerns regarding the previous proposed garage building within an area of land deemed to be outside of the area of

the domestic curtilage. It was suggested to the agent that consideration might be given to including for the change of use of this land as residential curtilage. It was considered that the proposed extension to the curtilage in itself would not necessarily result in harmful impact upon visual amenity but that at that stage the addition of the then proposed garage on the scale proposed would be harmful within the rural context.

6.4.2 The previous 2023 application had included a much larger area showing the whole field as being within the red line on the location plan, measuring approximately 7500msq.

6.4.3 The enlarged curtilage of the previous application was deemed to result in a significant alteration to the site and its wider context and to represent encroachment into presently undeveloped land on a scale which was unjustified.

6.4.4 It is recognised that the site area, now currently under consideration at around 440msq is significantly reduced from that previously proposed and is confined to an area immediately adjacent to the existing building group. The proposed extended curtilage is deemed to be commensurate with the overall scale of the property and its associated buildings and the highways safety improvement is considered to be a community benefit which weigh in favour of the application.

7.0 CONCLUSION

7.1 The proposed change of use of land to domestic curtilage is deemed to be proportionate to the size of the dwellinghouse and its outbuildings and is not deemed to result in any significant encroachment into open countryside. Furthermore, the proposal is deemed to result in a betterment in terms of highways safety. The application is therefore recommended for approval in accordance with development plan policies CS5, CS6, CS17, MD2, MD12 subject to conditions as set out in appendix one attached to this report.

8.0 Risk Assessment and Opportunities Appraisal

8.1 Risk Management

There are two principal risks associated with this recommendation as follows:

- As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.
- The decision may be challenged by way of a Judicial Review by a third

party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

8.2 Human Rights

Article 8 gives the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

8.3 Equalities

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in Planning Committee members' minds under section 70(2) of the Town and Country Planning Act 1990.

9.0 Financial Implications

There are likely financial implications if the decision and / or imposition of conditions is challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependent on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – insofar as they are material to the application. The weight given to this issue is a matter for the decision maker.

10. Background

Relevant Planning Policies

Central Government Guidance:

West Midlands Regional Spatial Strategy Policies:

Core Strategy and Saved Policies:

RELEVANT PLANNING HISTORY:

12/00922/FUL Erection of a 2 storey extension to side elevation, single storey extension to side and rear elevations: including internal alterations GRANT 23rd April 2012

12/03391/AMP Non-material amendment to planning permission 12/00922/FUL (360mm reduction in width of the two storey extension and 300mm reduction in width of the side elevation single storey extension of lean-to) GRANT 20th August 2012

22/01859/FUL Proposed garages and first floor studio with storage facility, together with formation of new vehicular access to replace existing access REFUSE 4th July 2022

23/02122/FUL Proposed garages with storage facility, together with formation of new vehicular access to replace existing access (revised scheme) REFUSE 1st September 2023

24/01471/FUL Change of use of non-domestic area into domestic area for parking and turning together with new vehicular access PDE

11. Additional Information

View details online: <http://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=SBRXY5TD07V00>

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
Cabinet Member (Portfolio Holder) - Councillor Chris Schofield
Local Member Cllr Robert Macey Cllr Mark Jones
Appendices APPENDIX 1 - Conditions

APPENDIX 1**Conditions****STANDARD CONDITION(S)**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91(1) of the Town and Country Planning Act, 1990 (As amended).

2. The development shall be carried out strictly in accordance with the approved plans, drawings and documents as listed in Schedule 1 below.

Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and details.

3. Vehicular access to the adjoining highway shall be limited to the new access shown on the approved plan 1210.356.BP1. The existing access opening shall be permanently stopped up across the highway boundary, by a permanent barrier/fence/wall/hedge within three months of the new access being brought into use. The existing access apron within the highway shall be retained.

Reason: To limit the number of accesses onto the highway in the interests of highway safety.

CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

4. No development shall be commenced until full details of landscape works have been approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include:

- a) Planting plans
- b) Schedules of plants, noting species, planting sizes and proposed numbers
- c) Implementation timetables.

Reason: To ensure the provision of amenity and biodiversity afforded by appropriate landscape design.

CONDITION(S) THAT REQUIRE APPROVAL DURING THE CONSTRUCTION/PRIOR TO THE OCCUPATION OF THE DEVELOPMENT

5. The access apron shall be constructed in accordance with Shropshire Council's specification currently in force for an access and shall be fully implemented prior to the use commencing.

Reason: To ensure the formation and construction of a satisfactory access in the interests of highway safety.

CONDITION(S) THAT ARE RELEVANT FOR THE LIFETIME OF THE DEVELOPMENT

6. The access, parking and turning areas shall be satisfactorily completed and laid out in accordance with the Site Block Plan Drawing No.1210.356.BP1 prior to the use commencing. The approved parking and turning areas shall thereafter be maintained at all times for that purpose.

Reason: To ensure the formation and construction of a satisfactory access and parking facilities in the interests of highway safety

7. Notwithstanding the provisions of the Town and Country (General Permitted Development) Order 2015 or any order revoking and re-enacting that Order with or without modification, no access gates or other means of closure shall be erected within 5.0 metres of the highway boundary.

Reason: To provide for the standing of parked vehicles clear of the highway carriageway in the interests of highway safety.

Informatives

1. The applicant's attention is drawn to the need to ensure that the provision of the visibility splay(s) required by this consent is safeguarded in any sale of the application site or part(s) thereof.

2. This planning permission does not authorise the applicant to:
- construct any means of access over the publicly maintained highway (footway or verge) or
- carry out any works within the publicly maintained highway, or

- authorise the laying of private apparatus within the confines of the public highway including any a new utility connection, or
- undertaking the disturbance of ground or structures supporting or abutting the publicly maintained highway

The applicant should in the first instance contact Shropshire Councils Street works team. This link provides further details

<https://www.shropshire.gov.uk/roads-and-highways/road-network-management/application-forms-and-charges/>

Please note Shropshire Council require at least 3 months' notice of the applicant's intention to commence any such works affecting the public highway so that the applicant can be provided with an appropriate licence, permit and/or approved specification for the works together and a list of approved contractors, as required.

3. The applicant is responsible for keeping the highway free from any mud or other material emanating from the application site or any works pertaining thereto.

4. Drainage arrangements shall be provided to ensure that surface water from the driveway and/or vehicular turning area does not discharge onto the public highway. No drainage or effluent from the proposed development shall be allowed to discharge into any highway drain or over any part of the public highway.

5. Preference should be given to drainage measures which allow rainwater to soakaway naturally. Connection of new surface water drainage systems to existing drains / sewers should only be undertaken as a last resort, if infiltration techniques are not achievable.

Shropshire Council will not permit new connections to the Highway Drainage network.

If non permeable surfacing is used on the driveways and parking areas which slope towards the highway, a drainage system to intercept water prior to flowing on to the public highway must be installed.

6. Nesting birds

The active nests of all wild birds are protected under the Wildlife and Countryside Act 1981 (as amended). An active nest is one being built, contains eggs or chicks, or on which fledged chicks are still dependent.

It is a criminal offence to kill, injure or take any wild bird; to take, damage or destroy an active nest; and to take or destroy an egg. There is an unlimited fine and/or up to six months imprisonment for such offences.

All vegetation clearance, tree removal and scrub removal and/or conversion, renovation and demolition work in buildings [or other suitable nesting habitat] should be carried out outside of the bird nesting season which runs from March to August inclusive.

If it is necessary for work to commence in the nesting season then a pre-commencement inspection of the vegetation and buildings for active bird nests should be carried out. If

vegetation or buildings cannot be clearly seen to be clear of nests then an appropriately qualified and experienced ecologist should be called in to carry out the check. Only if there are no active nests present should work be allowed to commence.

[Netting of trees or hedges to prevent birds from nesting should be avoided by appropriate planning of work. See guidance at <https://cieem.net/cieem-and-rspb-advise-against-netting-on-hedges-and-trees/>.]

[If during construction birds gain access to [any of] the building[s] and begin nesting, work must cease until the young birds have fledged.]

7. General site informative for wildlife protection

Widespread reptiles (adder, slow worm, common lizard and grass snake) are protected under the Wildlife and Countryside Act 1981 (as amended) from killing, injury and trade. Widespread amphibians (common toad, common frog, smooth newt and palmate newt) are protected from trade. The European hedgehog is a Species of Principal Importance under section 41 of the Natural Environment and Rural Communities Act 2006. Reasonable precautions should be taken during works to ensure that these species are not harmed.

The following procedures should be adopted to reduce the chance of killing or injuring small animals, including reptiles, amphibians and hedgehogs.

If piles of rubble, logs, bricks, other loose materials or other potential refuges are to be disturbed, this should be done by hand and carried out during the active season (March to October) when the weather is warm.

Areas of long and overgrown vegetation should be removed in stages. Vegetation should first be strimmed to a height of approximately 15cm and then left for 24 hours to allow any animals to move away from the area. Arisings should then be removed from the site or placed in habitat piles in suitable locations around the site. The vegetation can then be strimmed down to a height of 5cm and then cut down further or removed as required. Vegetation removal should be done in one direction, towards remaining vegetated areas (hedgerows etc.) to avoid trapping wildlife.

The grassland should be kept short prior to and during construction to avoid creating attractive habitats for wildlife.

All building materials, rubble, bricks and soil must be stored off the ground, e.g. on pallets, in skips or in other suitable containers, to prevent their use as refuges by wildlife.

Where possible, trenches should be excavated and closed in the same day to prevent any wildlife becoming trapped. If it is necessary to leave a trench open overnight then it should be sealed with a close-fitting plywood cover or a means of escape should be provided in the form of a shallow sloping earth ramp, sloped board or plank. Any open pipework should be capped overnight. All open trenches and pipework should be inspected at the start of each working day to ensure no animal is trapped.

Any common reptiles or amphibians discovered should be allowed to naturally disperse. Advice should be sought from an appropriately qualified and experienced ecologist if large numbers of common reptiles or amphibians are present.

If a great crested newt is discovered at any stage then all work must immediately halt and an appropriately qualified and experienced ecologist and Natural England (0300 060 3900) should be contacted for advice. The Local Planning Authority should also be informed.

If a hibernating hedgehog is found on the site, it should be covered over with a cardboard box and advice sought from an appropriately qualified and experienced ecologist or the British Hedgehog Preservation Society (01584 890 801).

[Hedgerows are more valuable to wildlife than fencing. Where fences are to be used, these should contain gaps at their bases (e.g. hedgehog-friendly gravel boards) to allow wildlife to move freely.]

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