



## Appeal Decision

Site visit made on 10 April 2024

**by H Wilkinson BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 24 May 2024**

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**Appeal Ref: APP/L3245/W/23/3330609**

**Lyndas Field, Cleobury Mortimer, Shropshire DY14 9DX**

- 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 Ms Sandra Whitmore against the decision of Shropshire Council.
  - The application Ref is 23/00912/FUL.
  - The development proposed is a replacement dwelling.
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### Decision

1. The appeal is allowed and planning permission is granted for a replacement dwelling at Lyndas Field, Cleobury Mortimer, Shropshire DY14 9DX in accordance with the terms of the application, Ref 23/00912/FUL, subject to the conditions in the attached schedule.

### Applications for costs

2. An application for costs was made by Ms Sandra Whitmore against Shropshire Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023. However, the policies of the Framework that are material to this case have not fundamentally changed. Therefore, I have proceeded to determine the appeal having regard to the revised Framework.
4. The site location as set out above has been taken from the Council's decision notice rather than the planning application form as this concisely identifies the location of the proposed development.
5. The change of use of the existing dwelling falls outside the scope of this appeal. I have therefore limited my considerations to the proposal before me, which relates solely to the erection of a replacement dwelling.
6. A signed Unilateral Undertaking (UU) dated 25 October 2023 accompanies the appeal. I shall return to the UU later in this decision.

### Main Issues

7. The main issues in this appeal are:
  - whether the appeal site would provide a suitable location for housing having regard to its position in the countryside; and,

- the effect of the appeal proposal on the character and appearance of the area.

## **Reasons**

### *Suitability of the site for housing*

8. Policy MD7a of the Shropshire Council Site Allocations and Management of Development Plan 2015 (SAMDev) sets out how the Council will manage new housing in the countryside. As a rural housing exception, criterion 3 of policy MD7a permits the replacement of existing dwellings in the countryside where the dwelling to be replaced is a permanent structure with an established continuing residential use. The policy goes on to explain that replacement dwellings should not be materially larger and must occupy the same footprint as the existing dwelling unless it can be demonstrated why this should not be the case. Based on the evidence, there seems to be no debate regarding the existing dwelling being a permanent structure with an established, continuing residential use or that the replacement would be materially larger than the building to be replaced.
9. The replacement dwelling would not occupy the footprint of the existing dwelling. Instead, it would be located on an area of undeveloped ground to the east of the main building complex. This would allow the existing building to be retained in its entirety and used in connection with the established breeding business and agricultural holding subject to planning permission. A condition requiring the cessation of the residential use of the existing dwelling prior to the first occupation of the replacement dwelling would provide a suitable mechanism to ensure that the appeal proposal would not result in new, unjustified residential development in the countryside.
10. For these reasons, I find that the appeal site would provide a suitable site for housing having regard to its position in the countryside. It would therefore comply with Policy CS5 of the Shropshire Local Development Framework: Adopted Core Strategy (the Core Strategy) together with Policy MD7a of the SAMDev. Amongst other aspects, these policies seek to strictly control development in the countryside to ensure that new housing development is strategically located. It would also be consistent with the housing objectives set out in the Shropshire Housing Supplementary Planning Document and the provisions of the Framework where they seek to ensure the delivery of sustainable housing.

### *Character and appearance*

11. The appeal site is occupied by a former army barracks hut and outbuildings. The immediate area is that of a rural landscape characterised by open fields separated by hedgerows and areas of woodland, interspersed with sporadic development including established farm complexes. While there is no evidence to suggest that the appeal site is subject to any landscape designation, its undeveloped nature positively contributes to the rural character and appearance of the locality.
12. The proposal would extend into a neighbouring field and would introduce built form onto land which is otherwise devoid of buildings. However, the proposed dwelling would be both physically and visually related to the existing buildings at the appeal site. Therefore, whilst detached, it would not

appear isolated or conspicuous in the context of its surroundings. The proposal would be agricultural in appearance and would therefore relate well to its rural surroundings whilst its modest scale and relatively low profile means that it would not be a dominant addition to the landscape.

13. I saw at my site visit that the site is visually contained such that visibility of the proposal would be relatively localised. Although the dwelling would be visible to users of the nearby public right of way, it would be viewed in connection with the existing buildings at the site and therefore would read as part of the building complex. Further, whilst there may be glimpses of the building from the road when approaching from the east, these views would be heavily filtered by the existing roadside vegetation. Accordingly, the building would not be an unduly prominent or visually obtrusive form of development.
14. Accordingly, the appeal development would not harm the character and appearance of the area. It would therefore accord with Policies CS5, CS6 and CS17 of the Core Strategy together with Policies MD2 and MD12 of the SAMDev. Collectively, and amongst other things, these policies seek to ensure that proposals maintain and enhance the countryside vitality and character and contribute to local distinctiveness. It would also be consistent with the design objectives of the Framework where they seek to safeguard the intrinsic character and beauty of the countryside.
15. Policy MD7a of the SAMDev relates to the management of housing in the countryside. My attention has not been drawn to any wording therein which relates to character and appearance and thus it is not determinative to this main issue.

### **Other Matters**

16. The Council's delegated report sets out that the appeal site is located within a Development High Risk Area as defined by the Coal Authority. The report<sup>1</sup> submitted by the appellant confirms that it is unlikely that the identified coal related features would impact on the stability of the appeal site, and I have no reason to doubt the findings in this respect.
17. The submitted UU makes provision for the cessation of the residential use of the existing dwelling upon first occupation of the replacement dwelling. In addition, it restricts the use of the existing building thereafter. Paragraph 55 of the Framework sets out that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. Even if it would be equally possible to overcome an objection via condition or obligation, the Planning Practice Guidance (PPG) states that a condition should be used.
18. The existing and proposed dwellings are identified within the application site boundary. Therefore, in this case, the use of the existing dwelling could be controlled by condition. Therefore, having regard to the tests set out in the CIL Regulations 2010 (as amended) and the Framework, this obligation is not necessary to make the development acceptable. As such, I do not consider that it would be lawful to take it into account as a reason for granting planning permission.

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<sup>1</sup> CON29M Coal Mining Report dated 13 September 2023

19. The second obligation sets out that the owner will commission a builder to build the replacement dwelling for her own occupation and that the owner will occupy the dwelling when built in the first instance for a period of 3 years from the date of completion. However, as a replacement dwelling, there is no policy justification for this. Therefore, the obligation in this regard is not necessary to make the development acceptable in planning terms or directly related to the development. Hence this obligation too would fail to meet the statutory tests, and, in my view, it would not be lawful to take it into account as a reason for granting planning permission.

### **Conditions**

20. I have had regard to the draft planning conditions that have been suggested by the Council and I have considered them against the tests in the Framework and the advice in the PPG. I have made such amendments as necessary to comply with those documents and for clarity and consistency.

21. In addition to the standard time limit condition, and in the interests of certainty, I have imposed a condition requiring that the development is carried out in accordance with the approved plans. To ensure that flood risk is appropriately managed, a surface water drainage strategy is required. A Mine Gas Risk Assessment is required to ensure that potential risks are suitably managed and public health is safeguarded.

22. To safeguard protected species and their habitats, it is necessary to condition adherence to the Reasonable Avoidance Measures set out in the Ecological Survey. To promote the biodiversity of the site, I have imposed a condition requiring the implementation of biodiversity enhancement measures. A condition requiring details of external lighting is imposed to minimise effects on biodiversity and wildlife. In the interests of the character and appearance of the area, a condition securing a scheme of landscaping is necessary. For the same reason, and notwithstanding the submitted plans, it is necessary to secure samples of the external materials. In the interests of highway safety, it is necessary to condition visibility splays.

23. To prevent the establishment of an unjustified dwelling in the countryside, it is necessary to impose a condition requiring the cessation of residential use of the existing dwelling upon first occupation of the replacement development. However, the use of the existing building in connection with the dog breeding business would require planning permission. As the change of use falls outside the scope of this appeal, it would not be appropriate to impose a condition requiring that the building be retained for such purposes.

### **Conclusion**

24. For the reasons given above the appeal is allowed.

*H Wilkinson*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - Site Location Plan
  - Proposed Block Plan
  - Proposed Floor Plan & Elevations
  - Proposed Plan Showing Visibility Splays
  - Site Drainage Plan – dated 2 June 2023
- 3) No development shall take place until a scheme of surface water drainage including a maintenance strategy has been submitted to and approved in writing by the local planning authority. The approved drainage measures shall thereafter be fully installed as approved prior to the first occupation of the development hereby approved and maintained as such thereafter.
- 4) No development (including site clearance) shall commence 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 shall thereafter be submitted to and approved in writing by the local planning authority before development commences.
- 5) 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. The works detailed as being necessary to make safe the mine gases shall be carried out in accordance with the approved Remediation Strategy.

If 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 in accordance with the requirements of the Environment Agency guidance Land Contamination: Risk Management (LCRM; 2020), shall be submitted to and approved in writing by the local planning authority. The remediation measures shall thereafter be implemented in accordance with the approved remediation scheme.

Following completion of the measures identified in the approved Remediation Strategy, and prior to any development taking place a Verification Report shall be submitted to and approved in writing by the local planning authority. This shall demonstrate 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.

- 6) No development shall commence on site (including site clearance) until a scheme of hard and soft landscaping, including an implementation programme and management plan has been submitted to and approved in writing by the local planning authority. The landscaping works shall thereafter be implemented and managed in accordance with the approved details.
- 7) No development shall take place above slab level until samples of the external materials/finishes have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.
- 8) Upon first occupation of the dwelling hereby approved, the residential use of the existing dwelling as identified on Drawing no. PL1 (Proposed Block Plan) shall cease. At no time thereafter shall the building be used for residential purposes.
- 9) Prior to the first occupation of the development, the access and visibility splays shall be laid out in accordance with Drawing No 1016 PL1 (Proposed Plan Showing Visibility Splays). The visibility splays shall thereafter be retained for their intended purposes for the lifetime of the development.
- 10) Prior to the first occupation of the development, a minimum of one external Woodcrete bat box or integrated bat brick, suitable for nursery or summer roosting for small crevice dwelling bat species and a minimum of one artificial birds nest, of either integrated brick design or external box design, suitable for starlings (42mm hole, starling specific) or sparrows (32mm hole, terrace design) shall be erected in suitable locations on site, allowing a clear flight path and where they will be unaffected by artificial lighting. These features shall thereafter be maintained and retained for the lifetime of the development.
- 11) Details of any external lighting shall be submitted to and approved in writing by the local planning authority prior to first installation. The lighting shall thereafter be installed, maintained, and operated in accordance with the approved details.
- 12) The development hereby permitted shall be undertaken strictly in accordance with the Reasonable Avoidance Measures and Mitigation in respect of Great Crested Newts, as set out in section 5.1.1 of the Great Crested Newt Assessment dated May 2023.

## **END OF SCHEDULE**