

Development Management Report

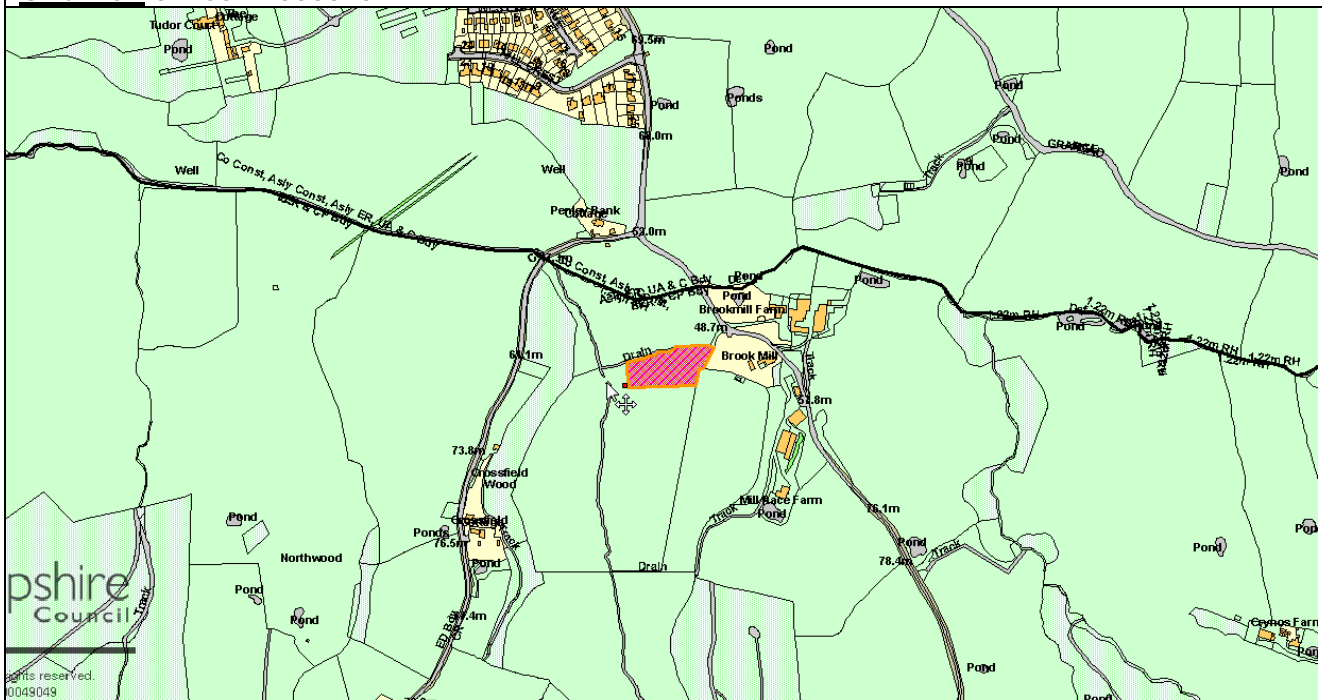
Responsible Officer: Tim Rogers

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Summary of Application

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|---|--|------------------------|
| Application Number: 14/02078/FUL | Parish: | Welshampton And Lyneal |
| Proposal: Construction of stables, manege and temporary mobile home and change of use of land from agricultural to equestrian use. | | |
| Site Address: Land At Brookmill Hampton Wood Ellesmere Shropshire | | |
| Applicant: Mrs M Kelsey | | |
| Case Officer: Janet Davies | email: planningdmnw@shropshire.gov.uk | |

Grid Ref: 341632 - 338843



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Recommendation:- Grant planning permission subject to the conditions set out in Appendix 1.

REPORT

1.0 THE PROPOSAL

1.1 This report is an addendum to the report presented to members in January 2015 which detailed the proposal for full planning permission for change of use of agricultural land to equestrian use on land at Brookmill, Hampton Wood near the village of Penley. The application site comprises 12 acres of grazing land. The site in 2013 with the objective of relocating her equestrian business to the land. The intention is to secure temporary planning consent for the mobile home for a 3 year period.

The following report seeks to advise members on their resolution that Committee were minded to refuse the application. The minutes of the meeting record that members raised the following concerns:

- Concern in relation to the visual impact the proposed development would have on the countryside
- Viability of the enterprise taking into account ground conditions and the need for the caravan.

2.0 Matters for Consideration

- **Visual impact**
- **Viability of the enterprise**

2.0 Visual Impact

2.1 The application is considered in the light of the National Planning Policy Framework (NPPF) which replaced the majority of national policy statements and guidance including Planning Policy Statement 7 (PPS7), Sustainable Development in Rural Areas.

2.1.1 Part 11 of the framework relates to: Conserving and enhancing the natural environment and is relevant to the consideration of the application. This states that the planning system should contribute to and enhance the natural and local environment by way of a number of measures including the protection and enhancement of valued landscapes, geological conservation interests and soils and wider benefits of ecosystem services. It requires that impacts on biodiversity are minimised, the avoidance of unacceptable levels of soil, air, water or noise pollution or land instability;
to wider ecological networks.'

2.1.2 Furthermore under the Council's adopted Core Strategy policy CS5 'Countryside and Green Belt' seeks to enhance the broader social and economic well-being of rural communities, facilitating development that supports appropriate land and resource based uses and economic diversification and that provides for local needs, including affordable housing, community facilities and infrastructure. It provides recognition that the countryside is a 'living-working' environment which requires support to maintain or enhance sustainability, together with the ability to adapt to the changing needs and circumstances.

2.1.3 Also CS6 'Sustainable Design and Development Principles' seeks to ensure that all development Protects, restores, conserves and enhances the natural, built and historic environment and is appropriate in scale, density, pattern and design taking into account the local context and character, and those features which contribute to local character, having regard to national and local design guidance, landscape character assessments and ecological strategies where appropriate.

2.1.4 Paragraph 28 of the NPPF requires planning policies to support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. This includes supporting sustainable growth and expansion of all types of business and enterprise in rural areas and the promotion of the development and diversification of agricultural and other land-based rural businesses.

2.1.5 At the meeting held in January 2015 members attention was drawn to the character and appearance of the area and key land uses and buildings adjoining the site from the site visit held on the morning of the meeting. Whilst members were able to view the site in context of the locality the officers report sought to explore the visual impact of the development and it considered that the visual impact of the proposed caravan and stable block to the wider landscape setting would be relatively minor given its scale and location adjacent to the existing hedgerow and would not appear out place within a countryside location.

2.1.6 Further to members concern the council commissioned a landscape and visual appraisal (LVA) which was undertaken in accordance with the current published guidelines. The appraisal submitted to the council is summarised as follows.

2.1.7 The landscape of the Brookmill locality and the nearby areas of the Shropshire and Wrexham Maelor landscape were surveyed to establish the potential visibility of the proposed development site from the surrounding areas. The area of potential visibility identified was found to be very much confined to the following local areas:

- the development site and its immediate environs, including the hamlet of Brookmill;
- parts of the elevated farmland on the edges of north side of the stream valley, and to the south-east and south-west of the hamlet.

- 2.1.8** The restricted visibility of the proposed development site within this small and secluded river valley is largely as a result of local landform and the existing vegetation pattern. The screening effects of belts and blocks of woodland, combined with mature field hedgerows with trees frequently overlapping and being concentrated in the same field of view, serve to very much restrict even medium range views (0.5 to 2kms) across the majority of this this gently rolling lowland plateau landscape to the north of Ellesmere. There are no long range views (beyond 2kms), except those to the hills of Wales on a sector of the western horizon from some sections of the upper northern and eastern edges of the stream valley.
- 2.1.9** Within the area of potential visibility identified, residential properties, local public footpaths, and the local access road network – including part of a locally-promoted cycle route - were assessed, in order to establish the predicted effects of the proposed development upon views experienced by their residents or users. Only 5 close-range (within 0.5km) residential receptors were identified, all of which are situated either within or on the edge of the valley at Brookmill. Of these, two would be substantially unaffected: the detached property on the north side of the public road to the east of the junction with Ellesmere Lane (0.175kms distant); and the detached property immediately on the east side of the road from Penley towards Ellesmere (0.3kms distant), situated to the north-east of Northwood Hall. The remaining 3 residential properties are the house known as Brook Mill (0.067kms to the east), and the farmsteads at Brook Mill Farm (0.090kms distant) and Mill Race Farm (0.185kms distant). None of these residential receptors would experience a level of residual visual effect which is greater than minor and adverse. The proposed development site is not visible from residential properties on the southern edge of Penley village, nor from those in the detached residential area of Hill Crest/Tudor Drive, due to the effects of intervening landform and vegetation.
- 2.1.10** The proposed development site would rarely be visible from some sections of the three minor public roads which pass through the rural landscape in the vicinity of the site. These roads include that between Penley and Ellesmere which forms part of the route of a promoted cycle route emanating from Ellesmere. This restricted visibility is as a result of a combination of the local topography and characteristic vegetation cover, the latter comprised of dense road-side hedgerows, often with frequent mature trees, together with intervening blocks and belts of woodland and copses. Views into the steep-sided stream valley are limited to those sections of the roads which run close to the edge of the valley or run down into the valley itself. The resultant residual visual effects on road users would be negligible adverse.
- 2.1.11** The proposed development site would only be partly visible from sections of two local public rights of way in the Brookmill vicinity. These are public footpaths. To the north-east of the site (at around 157 metres at its closest point) a public footpath runs north-eastwards from the junction with the foot of Ellesmere Lane to meet Grange Road, a minor public road running south-east from Penley towards Welshampton. Partial views of the proposed development site would be obtainable from around 140 metres of this footpath through mature field boundary hedgerows and tree vegetation during the winter aspect. Summer views would be substantially screened. The public footpath running westwards along the north side of the stream

valley would have even more restricted views of the proposed development site, due to the lower elevation of the footpath route and denser intervening woodland, tree and hedgerow vegetation. The resultant residual visual effects on footpath users would be minor adverse for the eastern footpath, and negligible adverse for the western footpath.

2.1.12 Also, within the vicinity of the development site, landscape elements and features were assessed as to what impacts on them would be predicted to arise from the proposed development. The effects on the landscape fabric of this part of the low-lying ground within the stream valley would be very localised: the loss of parts of an improved grassland field to construct the stables, site the mobile home and construct the manège. No hedgerows would be removed or depleted. Parts of the northern site boundary hedgerow would be reinforced by supplementary planting with native hedgerow shrub species. The eastern boundary hedgerow would be similarly supplemented and its line extended for a distance of 40 metres to the south.

2.1.13 Small scale stable buildings and yards associated with rural properties are a common feature in this part of the Shropshire landscape. The proposed development would not introduce new landscape elements. The supplementary hedgerow planting and extended hedgerow would have minor beneficial effects. The overall residual impact on the local landscape is therefore predicted as being negligible and adverse.

2.1.14 It is accepted that new development (operational development and change of use) in the open countryside will change the character and appearance of an area however the degree of harm resulting from any development will need careful consideration to be given by the decision maker. Whilst members were concerned that the proposed development would have a negative visual impact upon this part of open countryside officers consider that following the findings contained within the LVA it is advised that a refusal on these grounds would be weak and one which would put the Council at risk at appeal.

2.2 Viability of the Enterprise

2.2.1 Strategic objective 7 within the Core Strategy seeks to support the development of sustainable tourism, rural enterprise, broadband connectivity, diversification of the rural economy, and the continued importance of farming and agriculture, ensuring that development proposals are appropriate in their scale and nature with the character and quality of their location. Underpinning this objective are policies CS5 CS6 and CS13. CS 13 identifies that Shropshire Council, working with its partners, will plan positively to develop and diversify the Shropshire economy, supporting enterprise, and seek to deliver sustainable economic growth and prosperous communities. In doing so, particular emphasis will be placed on amongst other things in rural areas, recognising the continued importance of farming for food

production and supporting rural enterprise and diversification of the economy,

2.2.2

The core strategy is considered to be compliant with the overriding aspirations of the NPPF. Paragraph 28 of the NPPF highlights that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, local and neighbourhood plans should amongst other things support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings and promote the development and diversification of agricultural and other land-based rural businesses.

2.2.3

The Council instructed Reading Agricultural Consultants Ltd (RAC) to undertake a desktop appraisal of the application. RAC appraised the proposed planning application against the government's guidance as detailed in the National Planning Policy Framework (NPPF) in particular paragraphs 55 and 28 and the Shropshire Core Strategy Development Plan Document (March 2011). Whilst officers considered the overriding principles of the PPS 7 RAC have noted that PPS7 Annex A has been revoked (replaced March 2012) and is no longer applicable. Any appraisal that expressly examines an application against the policies within PPS7 is not relevant.

2.2.4

In order for RAC to carry out an appraisal the council forwarded the applicants business appraisal, Design and Access Statement, Supplementary Planning Report, cash flow predictions (2014-2017) and projected Profit and Loss Accounts (2015-2017).

2.2.5

RAC considered the functional need of the business and financial sustainability of the business. The report presented to members in January expanded on the functional and financial needs of the proposed business within paragraphs 6.4 to 6.5.

2.2.6

RAC considered that the standard accepted test for any rural worker's dwelling is that the business generates sufficient profits to provide an adequate return to land, labour and capital and be able to finance the build-cost of the dwelling, or in this case the purchase of a mobile home. Cash flow identifies private drawings well in excess of the minimum wage which is approximately £13,000 together with a reasonable return on the investment plus the forecast cost of the stables and menage and it is considered that these can be met from the projected profit and loss.

2.2.7

RAC has appraised the proposed planning application against the government's guidance as detailed in the National Planning Policy Framework (NPPF) in particular paragraphs 55 and 28 and the Shropshire Core Strategy Development Plan Document (March 2011). RAC would note that PPS7 Annex A has been revoked (replaced March 2012) and is no longer applicable. Any appraisal that expressly examines an application against the policies within PPS7 is irrelevant.

2.2.8

Overall RAC considered that the business accords with paragraph 28 of the NPPF in that there is a reasonable prospect that the business will become a sustainable new enterprise

2.2.9

Ground Conditions - During the course of the application photographs were submitted illustrating the current ground conditions. Members will recall that at the time of the site visit the land immediately adjoining the stables was poached.

2.2.10

Members will recall during the site visit that parts of the land were highly poached however RAC advise this would not be uncommon in periods of prolonged wet weather and where any animals are confined for a time in a small area. As explained to members the operation of the site and the condition and maintenance regimen is a management issue. If poaching of the land was a permanent feature of the land throughout the year and across the whole of the site it would not be considered good practice and may be considered a material consideration - but the weight one could attach to this matter is limited as the applicant is applying to construct a manège – the very type of construction many equine establishments require as a necessity where land is at a premium and to minimise the temporary poaching as seen on site and in photographs submitted by objectors. The agent has submitted an updated design and access statement and has noted that at the current time it has not been possible to operate the site or the business correctly without the necessary buildings and hard standing area.

2.2.11

The use of the land for the keeping of horses is considered to be an appropriate use in the open countryside and whilst parts of the site are within flood zone 2 and 3 the manège and stables would be considered appropriate development, as the outdoor equestrian manege is classed as an outdoor sports recreation area and is water compatible and the stable block which is to be used for livestock accommodation is deemed a less vulnerable use. The stable block will be at the edge of flood zone 3 and partially within zone 2 – as the stable block is not located within zone 3 planning practice guidance and flood risk zone compatibility notes that the use the land for such purposes is deemed appropriate. As part of the submission a flood risk assesment was carried out by Hafren Water and examined by the councils drainage to which no objection has been raised.

2.2.12

Further information has been provided by the applicant showing the two land drainage systems which have been installed using plastic perforated drains. The drainage shows an intensive system primarily at the northern end of the application site with outfalls into the Emerald Brook. It is understood from the drains have had no maintenance for over 10 years and a chamber lid had been knocked off by a previous ploughing contractor. The agent has advised that the applicant will be using a local contractor to jet the drainage system in spring 2015 so that it operates efficiently and will lower the water table across the relevant area and help manage the land .

2.2.13

With regard to poaching of the land the previous report made reference to welfare and health. Under the Animal Welfare Act 2006 it is an offence to cause unnecessary suffering to any animal. The Act also contains a Duty of Care which

means that anyone responsible for an animal must take reasonable steps to ensure the animal's needs are met and its welfare assured. In this case the overall responsibility or 'duty of care' for animal welfare for the horses stabled or under the applicant's care lies with the applicant. The creation of winter stables and menage will bring real benefits in raising welfare standards.

2.2.14 Whilst members were concerned that the condition of the land would affect the viability of the business it is officers opinion that poaching as witnessed on the land would not be uncommon at the time the site visit was carried out particularly where any animals are confined for a time in a small area. The erection of the stables and construction of the menage will create the environs for a higher level of animal welfare during periods of inclement weather and will allow for improved opportunities to manage the land and reduce the occurrence of poaching. The condition of the land as witnessed on site and location of part of the site in flood zone 2 and 3 the condition of the land is not considered to undermine the viability of the business and it is advised that a refusal on these grounds would be weak and one which would put the Council at risk at appeal

2.2.15

Caravan - During the meeting held in January members raised concerns regarding of the need for an essential worker to reside on site in a caravan . As highlighted in the January committee report the proposed equestrian business provides a range of services (not all though would require on-site attendance) and where the breeding, foaling of mares, and sale of her own horses and breaking and schooling of client's horses is expanding. These activities require a great deal of management expertise and attention to detail and a list of activities were set out in a supplementary report itemised under 'Functional Need'.

2.2.16

It is agreed that horses need to be inspected frequently for signs of illness, distress or injury, and equestrian establishments have a duty of care to ensure the rapid diagnosis and treatment of injury, disease or infestation

2.2.17

It is agreed that unforeseen incidents can cover a wide range of situations as described by the applicant, from dealing with emergencies such as a horse cast in its box or a horse with colic, to damage to the stables and associated buildings from the horses, severe weather conditions or fire.

2.2.18

The new stables will provide the necessary accommodation for brood mares and stallions, storage of tack and feed. The menage will allow an exercise, training and schooling area for horses.

2.2.19

The application for the dwelling is for a temporary three year period only and if the applicant's proposed business plan, projected income streams and profit forecast have not materialised at the end of the three years, any future independent appraisal is likely to conclude the business was not sustainable. As noted by RAC this is the very reason for approval of a temporary rural worker's dwelling particularly for a fledgling or new business, if an essential need has been accepted, is to test whether the business is sustainable

3.0

3.1 **Conclusion**

Officers have sought to advise members within this report of the issues raised at the January meeting. Research has been undertaken to provide members with evidence on the issues raised however no evidence has been found which would substantiate a defensible reason for refusal of the application. As such, the officer's recommendation remains the same as that presented at the December meeting, which is that planning permission be granted subject to conditions,

3.2

The proposal for the change of use of land for equine purposes with the erection of stables and construction of menage is a form of rural enterprise that is generally supported under local and national policy. A landscape visual appraisal has been carried out and small scale stable buildings and yards associated with rural properties are a common feature in this part of the Shropshire landscape. The proposed development would not introduce new landscape elements. The supplementary hedgerow planting and extended hedgerow would have minor beneficial effects. The overall residual impact on the local landscape is considered to be negligible.

3.3

Ground conditions of the site are not considered to undermine the viability of the enterprise as the facilities for which planning permission is being sought will assist in future land management issues. The use of the land for the keeping of horses is considered to be a compatible use for land located within flood zone 2 and 3 as highlighted within the planning practice guidance and flood risk zone compatibility notes.

3.4

The need for the caravan has been assessed by RAC and based on the information provided there it is considered that there is an essential need for a resident worker to live on site to ensure the welfare and security of the horses is not compromised and the applicant's business can develop and expand as identified in the business appraisal.

3.5

It is advised that a refusal on the above grounds would be weak and one which would put the Council at risk at appeal.

The proposed equestrian use is deemed to be an appropriate use and scale within its countryside location and it is considered that it is essential to the proper functioning of the rural enterprise for a worker to live on site as verified by the report undertaken by Reading Agricultural. The proposal is therefore deemed to comply with the relevant policies CS5, CS6, CS7, CS11, CS17 and CS18 of the adopted Core Strategy, the adopted SPD (Type and Affordability of Housing) and the NPPF and is recommended for approval.

4.0 Risk Assessment and Opportunities Appraisal

4.1 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.

4.2 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.

4.3 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.

5.0 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.

6.0 Background

Relevant Planning Policies

Central Government Guidance:

West Midlands Regional Spatial Strategy Policies:

Core Strategy and Saved Policies:

RELEVANT PLANNING HISTORY:

13/00668/AGR Open plan barn with double pitched roof, clad with profiled steel sheeting colour green, with timber vertical cladding also coloured green Field shelter also double pitched roof, felted with horizontal feather edged boarding also coloured green, and on skids. PPREQN 20th March 2013

7.0 Additional Information

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| 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) |
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| Cllr M. Price |
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| Local Member |
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| Cllr Brian Williams |
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| Appendices |
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| APPENDIX 1 – Committee report presented to members dated 20/1/15 |
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