



Committee and date

South Planning Committee

10 March 2015

## Development Management Report

Responsible Officer: Tim Rogers

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### Summary of Application

<b>Application Number:</b> 15/00241/CPL	<b>Parish:</b>	Craven Arms
<b>Proposal:</b> Application for lawful development certificate in respect of proposed erection of single-storey extension to southeast side of dwelling		
<b>Site Address:</b> Haulfryn Halford Craven Arms Shropshire SY7 9JG		
<b>Applicant:</b> Mr David Evans		
<b>Case Officer:</b> Trystan Williams	<b>email:</b> <a href="mailto:planningdmsw@shropshire.gov.uk">planningdmsw@shropshire.gov.uk</a>	

**Grid Ref:** 343740 – 283117



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Contact: Tim Rogers (01743) 258773

**Recommendation:** Issue lawful development certificate

**Recommended reason for approval:**

The development as described above and indicated on the submitted plans and particulars would constitute 'permitted development' under Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). As such it does not require an express consent from the local planning authority.

## REPORT

### 1.0 THE PROPOSAL

1.1 Originally a request for full planning permission, this application now seeks a determination under Section 192 of the Town and Country Planning Act 1990 (as amended) as to whether a proposed single-storey extension to the southeast side of the above dwelling house would be 'lawful' without an express consent.

### 2.0 SITE LOCATION/DESCRIPTION

2.1 The property is a detached bungalow fronting a minor road at Halford, east of Craven Arms and just outside the Shropshire Hills Area of Outstanding Natural Beauty (AONB).

### 3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

3.1 In accordance with the adopted 'Scheme of Delegation' the application is presented to the planning committee for determination since it is made by and relates to the property of an elected member of Shropshire Council.

### 4.0 COMMUNITY REPRESENTATIONS

#### 4.1 Consultee comments

4.1.1 None

#### 4.2 Public comments

4.2.1 None

### 5.0 THE MAIN ISSUES

5.1 Since the application as amended is not for planning permission but for a lawful development certificate, the planning merits of the scheme are irrelevant. Rather, the sole issue is whether the extension can lawfully be constructed without an express planning permission.

### 6.0 OFFICER APPRAISAL

#### 6.1 Lawfulness of proposed development

6.1.1 The system of certificates of lawfulness was introduced by the 1992 amendments to Sections 191 and 192 of the 1990 Act, and is described fully in Annex 8 of the former Circular 10/97. This explains that one of the scenarios in which a building operation is 'lawful' is where it constitutes 'permitted development' under the

General Permitted Development Order (GPDO).

6.1.2

Schedule 2, Part 1, Class A of the GPDO (as amended in 2008) provides that the “enlargement, improvement or other alteration of a dwelling house” is permitted development, subject to certain restrictions on size, position, materials etc. In this case the proposed extension would adhere to those restrictions in that:

- The combined ground area covered by additions and outbuildings would not exceed 50% of the total area of the domestic curtilage.
- The extension would not protrude above the highest part of the roof of the existing dwelling.
- The eaves of the extension would not be higher than the eaves of the existing dwelling, or higher than three metres above ground level.
- The extension would not project beyond the wall which fronts the highway.
- The extension would not protrude beyond the rear wall.
- Although the extension would project beyond a side wall it would be of a single storey, under four metres high and less than half the width of the original dwelling. Furthermore the site is not designated ‘Article 1(5) land’ (as noted above it is outside the AONB).
- The scheme does not involve the provision of a veranda, balcony, raised platform, microwave antenna, chimney or flue, or any alteration to the existing roof.
- The external materials would match those existing.

## 7.0 CONCLUSION

7.1 Given the above the proposed extension constitutes permitted development under Schedule 2, Part 1, Class A of the GPDO. As such it does not require formal approval from the local planning authority, and accordingly a certificate of lawfulness can be issued.

## 8.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL

### 8.1 Risk management

8.1.1 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**

8.2.1 Article 8 of the First Protocol of the European Convention on Human Rights gives the right to respect for private and family life, whilst 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.

8.2.2 Article 1 also requires that the desires of landowners must be balanced against the impact of development upon nationally important features and on residents.

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

## 8.3 **Equalities**

8.3.1 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 1970.

## 9.0 **FINANCIAL IMPLICATIONS**

9.1 There are likely financial implications if the decision and/or imposition of conditions are 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.

## 10.0 **BACKGROUND**

### **Relevant Planning Policies:**

Not applicable – the considerations are solely matters of law.

### **Relevant Planning History:**

None

## 11.0 **ADDITIONAL INFORMATION**

**View details online:**

**List of Background Papers:**

Application documents available on Council website

**Cabinet Member (Portfolio Holder):**

Cllr M. Price

**Local Members:**

Cllr Lee Chapman

Cllr David Evans

**Appendices:**

Appendix 1 – Conditions and informatives

## **APPENDIX 1 – CONDITIONS AND INFORMATIVES**

### **CONDITIONS**

None

### **INFORMATIVES**

1. In arriving at this decision the Council has used its best endeavours to work with the applicant in a positive and proactive manner to secure an appropriate outcome as required in the National Planning Policy Framework paragraph 187.