

AGENDA ITEM



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| Committee and date |
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Development Management Report

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

Summary of Application

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| Application Number: 24/00390/VAR | Parish: | Claverley |
| Proposal: Removal of Condition No.s 11 and 13 attached to planning permission 17/02852/FUL dated 09 October 2018 | | |
| Site Address: The Lodge Huffage Farm Woundale Bridgnorth Shropshire | | |
| Applicant: Jennifer Jones | | |
| Case Officer: Sara Jones | email: sara.jones@shropshire.gov.uk | |

Grid Ref: 377281 - 293226

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Recommendation:- that delegated authority be given to Officers to secure a Deed of Variation to the Section 106 Agreement to ensure that the dwelling would remain affordable in perpetuity and grant permission subject to the conditions as set out in Appendix 1.

REPORT

1.0 THE PROPOSAL

1.1 This application proposes the removal of conditions 11 and 13 attached to planning permission 17/02852/FUL.

1.2 Condition 11 states:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development relating to schedule 2 part 1 class A, B, C, D, and E shall be erected, constructed or carried out.

Reason: To ensure that the dwelling remains of a size which is "affordable" to local people in housing need in accordance with the Council's adopted affordable housing policy.

Condition 13 states:

The dwelling hereby permitted shall not exceed 100 square metres gross internal floor area, including any future extensions. No further internal habitable space shall be created within the dwelling by internal alterations.

Reason: To ensure that the dwelling is of a size appropriate to the local affordable housing market.

2.0 SITE LOCATION/DESCRIPTION

2.1 The site is located within the Green Belt open countryside located west of Claverley village in the hamlet of Woundale which is a small group of farmsteads and dwellings dispersed around a crossroads. Woundale is a "tight knit", though small, settlement.

2.2 The existing dwelling comprises a single storey bungalow with dual pitched tiled roof, facing brickwork with entrance porch, 3 bedrooms, bathroom, WC and open plan living/diner/ kitchen area. A detached double garage is located to the east of the dwelling with parking provision, amenity land to the north west, south west and beyond the garage to the east.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

3.1 The Parish Council has objected contrary to the Officer recommendation. The

Area Manager in consultation with the chairman have considered this and have concluded that the application raises material planning issues and should be determined by Committee.

4.0 Community Representations

Consultee Comment

SC Affordable Housing – Support, subject to a Deed of Variation which maintains the value of the dwelling to 60% of the dwelling as permitted by 17/02852/FUL.

Public Comments

Claverley PC – Neutral.

Comment: No objection to the removal of Condition 13. However, as this site is an exception site in the Green Belt the Parish Council would object to the removal of Condition 11 (permitted development rights) as it feels any development in the Green Belt should have the full scrutiny of a full planning application with associated plans.

A Site Notice has publicised the application. No representations have been received.

5.0 THE MAIN ISSUES

5.1 Planning Considerations

6.0 OFFICER APPRAISAL

6.1 Planning Considerations

6.1.1 Planning Conditions may be imposed when planning permission is granted in order to regulate the development or the use of any land in question. Section 73 of the Town and Country Planning Act 1990 (As amended) allows applications to be made for permission to develop without complying with a condition(s) previously imposed on a planning permission. Paragraph 55 of the NPPF and PPG paragraph 003 sets out the 6 tests for conditions. They must be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects. PPG paragraph 017 advises that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances.

6.1.2 The rationale for the Council's Single Plot Exception Scheme (SPES) is to engender additional community resilience and sustainability, and to increase the affordable rural housing stock. The SPES is a self-help scheme enabling qualifying people to build their own homes on appropriate single plot exception sites. This tenure provides a solution for those people in rural communities whose needs are not met by the market, and yet may also not be a priority for the more mainstream affordable tenures development by Registered Providers. The Council's SPD stipulates when the first occupier no longer has need for the

dwelling, they will transfer it at the appropriate affordable value to another local person in need. Thus, the community benefit of providing the affordable dwelling in the first place is itself recycled.

- 6.1.3 Planning permission was granted for 'The Lodge' in 2018 under the Single Plot Exception Site Scheme (SPES). The permitted dwelling is single storey and provides three bedrooms together with a living/kitchen/dining area. In addition, a detached double garage was permitted. Planning permission was granted subject to planning conditions which prevented the dwelling from being extended beyond 100 sq. metres and the removal of permitted development rights as with all SPES dwellings. The reasons for the conditions were to ensure that the dwelling remains as an affordable dwelling to local people and to ensure that the dwelling is of a size appropriate to the local affordable housing market.
- 6.1.4 In addition, the permission was subject to a S106 Agreement that restricts the value and occupation of the dwelling house. The resale value of a SPES dwelling is set at a "Formula Price" which means 60% of the open market value of the Dwelling (excluding any extensions or conversions or alteration to the Development). Detached garages do not count against the permitted 100 sq. metres and therefore do not form part of its value and therefore are built at 'nil' value.
- 6.1.5 The Planning Statement submitted with this application explains that due to changes in the household formation the applicants require more space and to create two additional bedrooms in the roof space. In addition, it is noted that the existing internal layout of the dwelling would appear to limit the opportunities for internal reconfiguration.
- 6.1.6 The Council's SPD indicates that it may be acceptable to enlarge an existing affordable house to accommodate the needs of the existing household when there are genuine difficulties faced by growing households. Furthermore, the SPD acknowledges that it may not be possible for occupants to move to a new house due to the chronic shortage of affordable housing in Shropshire and that the potential sale value of the dwelling would be restricted as if it were still 100 sqm.
- 6.1.7 It is noted that the reason that the conditions were imposed in the first place was to enable the Local Planning Authority to ensure that the dwelling remains of a size which is "affordable" to local people in housing need in accordance with the Council's adopted affordable housing policy.
- 6.1.8 Government guidance advises that; 'Local planning authorities should, in making their decisions, focus their attention on national and development plan policies, and other material considerations which may have changed significantly since the original grant of permission'. The Planning Statement draws attention to recent appeal decisions where the Inspectors have concluded that the future value of the dwelling would be restricted by the planning obligation to ensure that it would

remain affordable in perpetuity and therefore the use of permitted development rights would not affect its contribution to the supply of affordable housing in the area. The proposal would therefore be consistent with the aims of Policy CS11 of the Shropshire Core Strategy (2011) and Policy MD7a of the Shropshire Site Allocations and Management of Development Plan (2015). Furthermore, the Statement draws attention to the fact that the removal of condition No.11 would only re-instate permitted development rights (PDR) which will be controlled by what is permitted by Schedule 2 of the General Permitted Development Order 2015 (as revised) (GPDO) and would therefore remain controlled. These are significant material considerations.

6.1.9 Whilst the comments made by the Parish Council are acknowledged with respect to the location of the site in the Green Belt it is noted that the GPDO does not limit householder PDRs in the Green Belt designation.

6.1.10 Given the above bearing in mind 'the reason' for the conditions officers consider that there is no justification not to remove condition 11 and 13 in this case.

6.2 Other Matters

6.2.1 A S73 application constitutes a new permission and therefore in approving this application, to ensure the property's ongoing affordability it needs to be tied by a S106. Which in this case will mean a deed of variation to the original S106 to include the new consent. The agent is aware of this and as such the new decision notice can be issued when the amended s106 is completed.

6.2.2 Whilst it is noted that the SC Housing Enabling Team are supportive of the opportunity for the family to create additional bedrooms in the roof space, subject to a Deed of Variation which maintains the value of the dwelling to 60% of the dwelling as permitted by 17/02852/FUL. The existing garage should remain detached and should explicitly be excluded from any valuation of the dwelling together with any other structure/extension built under permitted development. Without such requirements being included within a Deed of Variation they would be unable to support the proposed variation, given that would be unlikely that the dwelling could be maintained in perpetuity as an affordable dwelling.

7.0 CONCLUSION

7.1 The conditions, subject of this application, were imposed to enable the Local Planning Authority to ensure that the dwelling remains of a size which is "affordable" to local people in housing need in accordance with the Council's adopted affordable housing policy. The future value of the dwelling may however be restricted by a Deed of variation to the planning obligation to ensure that it would remain affordable in perpetuity. As such it is concluded that there is no justification to resist the removal of condition 11 and 13 in this case.

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:

National Planning Policy Framework

National Planning Practice Guidance

Core Strategy and SAMDev Plan Policies:

CS11 - Type and Affordability of housing

MD7A - Managing Housing Development in the Countryside

SPD Type and Affordability of Housing

RELEVANT PLANNING HISTORY:

17/02852/FUL Erection of an affordable dwelling with detached double garage and formation of vehicular access GRANT 9th October 2018

19/00150/DIS Discharge of conditions 4 (survey levels), 5 (site levels), 6 (parking), 7 (access), 8 (bat boxes) and 10 (lighting) on planning permission 17/02852/FUL for the erection of an affordable dwelling with detached double garage and formation of vehicular access DISAPP 5th March 2019

11. Additional Information

View details online: <http://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=S8592PTDN3M00>

List of Background Papers

Planning application reference 24/00390/VAR and plans and supplementary reports.

Cabinet Member (Portfolio Holder) - Councillor Chris Schofield

Local Member

AGENDA ITEM

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| - | The Lodge |
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| Cllr Colin Taylor |
| Appendices APPENDIX 1 - Conditions |

APPENDIX 1

Conditions

STANDARD CONDITION(S)

1. The access, parking and turning areas approved under application 19/00150/DIS shall be kept clear and maintained at all times for that purpose in perpetuity.

Reason: To avoid congestion in the surrounding area.

2. The Bat and Bird boxes approved under application 19/00150/DIS shall be retained for the lifetime of the development.

Reason: To ensure the provision of roosting and nesting opportunities, in accordance with MD12, CS17 and the NPPF.

3. There shall be no amendment to the external lighting scheme approved under application 19/00150/DIS.

Reason: To minimise disturbance to bats, which are European Protected Species.

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

4. Any gates provided to close the proposed access shall be set a minimum distance of 5 metres from the carriageway edge and shall be made to open inwards only.

Reason: To ensure a satisfactory form of access is provided in the interests of highway safety.

Informatives

1. In arriving at this decision Shropshire 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 38.