

# TEWKESBURY BOROUGH COUNCIL – DEVELOPMENT MANAGEMENT

<b>Committee:</b>	Planning
<b>Date:</b>	21 December 2021
<b>Site Location:</b>	Land Adjacent Blenheim Way Shurdington
<b>Application No:</b>	21/01312/PIP
<b>Ward:</b>	Shurdington
<b>Parish:</b>	Shurdington
<b>Proposal:</b>	Erection of a single dwelling.
<b>Report by:</b>	Gemma Smith
<b>Appendices:</b>	Site location plan Topography Plan
<b>Recommendation:</b>	Permit

## 1.0 SITE DESCRIPTION AND PROPOSAL

### Application Site

- 1.1** The Application Site is located on land in between Blenheim Way and Phoenix Meadow (formally known as New Haven) to the west side of School Lane in Shurdington. The site is located by surrounding residential properties. Access to the site is obtained via a field gate from School Lane.

### The Proposal

- 1.2** The application is for Permission in Principle, which is defined in the NPPF as a form of planning consent which establishes that a site is suitable for a specified amount of housing-led development in principle. Following any grant of permission in principle, the site must receive a grant of technical details before development can proceed.
- 1.3** This current application is the first stage of the process and solely seeks to establish whether the site is suitable in principle for the erection of a single replacement dwelling on the site would be acceptable in principle.
- 1.4** Government's guidance sets out that the scope of the first stage of permission in principle is limited to location, land use and amount of development. The site layout, design (for a two storey dwelling), access, landscaping, drainage and any other relevant technical matters would be considered at the *'technical details'* stage. For clarification there is no indicative plan for the site layout for the site. There is a pending application at the site for full planning for one dwelling under reference 21/00868/FUL.

## Agents Submission

1.5 The application is supported by a covering letter.

## 2.0 RELEVANT PLANNING HISTORY

Application Number	Proposal	Decision	Decision Date
T.2398	Erection of pair of semi-detached farm workers cottages. Construction of pedestrian access.	PERMIT	17.07.1956
T.2398/AP	Erection of two semi-detached houses for farm workers.	PERMIT	16.10.1956
05/01336/FUL	Erection of a white PVCu Edwardian conservatory to rear of property	PER	08.12.2005
21/00868/FUL	Erection of a single dwelling and associated access	<i>Pending</i>	

## 3.0 RELEVANT POLICY

The following planning guidance and policies are relevant to the consideration of this application:

### 3.1 National guidance

National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG)

### 3.2 Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) – Adopted 11 December 2017

- Policy SP1 (Need for New Development)
- Policy SP2 (Distribution of New Development)
- SD5 (Green Belt)
- SD6 (Landscape)
- SD10 (Residential Development)

### **3.3 Tewkesbury Borough Local Plan to 2011 – March 2006 (TBPL)**

- None relevant

### **3.4 Tewkesbury Borough Plan 2011-2031 Pre-submission Version (October 2019)**

- Policy RES2 – Settlement Boundaries
- Policy RES5 – New Housing Development

### **3.5 Neighbourhood Plan**

None

### **3.6 Other relevant policies/legislation**

- Human Rights Act 1998
- Article 8 (Right to Respect for Private and Family Life)
- The First Protocol - Article 1 (Protection of Property)

## **4.0 CONSULTATIONS**

Full copies of all the consultation responses are available online at <https://publicaccess.tewkesbury.gov.uk/online-applications/>.

### **4.1 Shurdington Parish Council – Objection for the following reasons:**

- Concerned with run off in flood events as field parallel to no longer acts as run-off for Ham Brook flood events.
- Concerned with anticipated soakaways to be adopted which conflicts with Lead Flood Authority concerns in response to pending application 21/00868/FUL.
- The site is not designated infill in the current (draft) Tewkesbury Local Plan. The site relates to agricultural land, within the existing green belt outside of the settlement village.

### **4.2 Gloucestershire County Council (Highways Team) – No objection**

### **4.3 Gloucestershire County Council (Archaeology) – No objection with following comments:**

- Low risk that archaeological remains will be adversely affected by this development proposal. Therefore, no archaeological investigation or recording need to be undertaken in connection with this scheme.

### **4.4 Land Drainage – No comments received.**

### **4.5 Environmental Health – No objection in relation to noise/nuisance issues.**

### **4.6 Tree Officer- No comments received.**

## **5.0 PUBLICITY AND REPRESENTATIONS**

Full copies of all the representation responses are available online at <https://publicaccess.tewkesbury.gov.uk/online-applications/>.

**5.1** The application has been publicised through the posting of a site notice for a period of 21 days there have been six representations in response. The responses are summarised as follows:

- 5.2**
- Concerns with traffic and access. The lack of parking facilities for some of the cottages along this part that leads on to a public footpath would be exacerbated.
  - Not part of the infill plan and concerned that it is agricultural land.
  - The proposed rear boundary for the new site extends far beyond the neighbouring gardens into the Green Belt field.
  - Small section can be considered as infill.
  - Concerns with future flooding.
  - Concerns that the proposal would have a detrimental effect on the street scene and in particular will effect neighbouring amenity of nearby neighbouring dwellings.

## **6.0 POLICY CONTEXT**

**6.1** Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. Section 70 (2) of the Town and Country Planning Act 1990 provides that the Local Planning Authority shall have regard to the provisions of the Development Plan, so far as material to the application, and to any other material considerations.

**6.2** The Development Plan currently comprises the Joint Core Strategy (JCS) (2017), saved policies of the Tewkesbury Borough Local Plan to 2011 (March 2006) (TBLP), and a number of 'made' Neighbourhood Development Plans.

**6.3** The Tewkesbury Borough Plan (TBP) has reached an advanced stage. The Pre-Submission TBP was submitted for examination in May 2020. Examination in Public (EiP) took place over five weeks during February and March 2021. The examining Inspector's post hearings Main Modifications letter was received on 16th June 2021. In this letter the Inspector provided his current view as to what modifications are required to make the Plan 'sound'.

**6.4** A schedule of Main Modifications to the Pre-submission TBP were approved at the meeting of the Council on 20th October 2021 and is now published for consultation as the Main Modifications Tewkesbury Borough Plan (MMTBP).

- 6.5** Those policies in the MMTBP which were not listed as requiring main modifications may now attract more weight in the consideration of applications, with those policies which are subject to main modifications attracting less weight depending on the extent of the changes required. The TBP remains an emerging plan and the weight that may be attributed to individual policies (including as with modifications as published for consultation) will still be subject to the extent to which there are unresolved objections (the less significant the unresolved objections, the greater the weight that may be given) and the degree of consistency with the NPPF (the closer the policies to those in the NPPF the greater the weight that may be given).
- 6.6** The relevant policies are set out in the appropriate sections of this report.
- 6.7** Other material policy considerations include national planning guidance contained within the National Planning Policy Framework 2021 and its associated Planning Practice Guidance (PPG), the National Design Guide (NDG) and National Model Design Code.

## **7.0 ANALYSIS**

- 7.1** The guidance (paragraph 012 of the Planning Practice Guidance) for permission in principle states that the scope of the pip is limited to:
- location
  - land use
  - amount

Each of these are discussed in below.

### ***Location of Development***

- 7.2** Policy SP2 of the JCS sets out the strategy for the distribution of new development across the JCS area, and JCS Policy SD10 specifies that, within the JCS area, new housing will be planned in order to deliver the scale and distribution of housing development set out in Policies SP1 and SP2. It sets out that housing development will be permitted at sites allocated for housing through the development plan, including Strategic Allocations and allocations in district and neighbourhood plans.
- 7.3** The site lies within Green Belt as identified within the Proposals Map within the JCS, 2017. The site lies adjacent to the built up area of Shurdington, identified as a service village within table SP2c within the JCS.
- 7.4** Turning to the emerging Proposals Map within the PSTBLP, whilst the whole site is located within designated Green Belt, the southern aspect of the site has been included in the defined settlement boundary for Shurdington.

## **Location of Development – Green Belt**

- 7.5** The site lies within the designated Green Belt where the construction of new buildings are regarded as inappropriate and thus carry a presumption of refusal. Paragraph 147 of the NPPF states that inappropriate development, is by definition, harmful to the Green Belt and should not be approved in very special circumstances. Paragraph 149 of the NPPF states that local authorities should regard the construction of new buildings within Green Belt as inappropriate.
- 7.6** This is reiterated within Policy SD5 of the JCS that states development will be restricted to the limited types of development which are deemed appropriate by the NPPF. There are exceptions to this position as set out within Paragraphs 149 & 150 of the NPPF.
- 7.7** Since the JCS, the NPPF has been updated, however Policy SD5 is considered compliant with the updated NPPF.
- 7.8** Point e) within Paragraph 149 of the NPPF, states that limited infilling in villages can be regarded as an exception to inappropriate development within the Green Belt. For the purposes of the development plan, the JCS Proposals Map show that the site is located within the Green Belt adjacent to defined development boundary.
- 7.9** There is no definition what constitutes limited infilling within the NPPF, JCS or emerging PSTBLP.
- 7.10** Policy SP2 of the JCS establishes the overarching policy approach when seeking to guide new development to meet the needs of the district. Development is steered towards those settlements considered to be the most sustainable owing to their access to local services, community facilities and sustainable transport opportunities. This approach of guiding development to areas considered to offer the best potential for promoting sustainable development is considered to reflect the approach outlined in the NPPF.
- 7.11** The emerging Proposals Map show part of the site within the defined development boundary of Shurdington. However there has been no alteration to the Green Belt in this part. Previous case law seeks for the decision maker to consider whether, as a matter of fact on the ground, the application site appears to be in a village, not solely whether it lies outside the village boundary as designated in the development plan village.
- 7.12** The findings of Julian Wood v. The Secretary of State for Communities and Local Government and Gravesham Borough Council [2015] is not disputed. Local examples such as in Bobbington (Land at Six Ashes Road (Appeal Reference APP/C430/W/18/3207145), demonstrate that to qualify under exception e) of the NPPF, the development site does not necessarily have to be within a defined development boundary for a village as specified in this case within the spatial policy within Policy SP2 of the defined development boundary.
- 7.13** The northern aspect of the site is acknowledged to lie adjacent to the settlement boundary of Shurdington, however the site is bounded to the east by the dwellinghouse known as 'New Haven'. With the land to the south clearly within the built-up frontage of School Lane which compromise a small ribbon development along the lane of a dwellings in varying styles and designs.

- 7.14 As such, it is considered that the proposal would fall into the definition of 'limited infilling within villages' under point e) Paragraph 149 of the NPPF.
- 7.15 The impact on the openness of the Green Belt in this part would be assessed during the technical details stage as to the actual harm to the Green Belt.

### ***Five Year Housing Land Supply***

- 7.16 As set out in the latest Tewkesbury Borough Five Year Housing Land Supply Statement published in December 2020, the Council can demonstrate a 4.35 year supply of deliverable housing sites. On the basis therefore that the Council cannot at this time demonstrate a five year supply of deliverable housing land, the Council's policies for the provision of housing should not be considered up-to-date in accordance with footnote 7 of the NPPF and in accordance with Paragraph 11 of the NPPF the presumption in favour of sustainable development (the 'tilted balance') applies. Paragraph 11 of the NPPF states that where policies which are most important for determining the application are out of date, permission should be granted unless: d)i. the application of policies in the Framework that protect assets of particular importance provides a clear reason for refusing the development; or ii). any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This will be assessed below.
- 7.17 Members will be aware of the appeal decision at Ashmead Drive in which the Inspector concluded that the Council could demonstrate a 1.82 year supply and the subsequent High Court judgment. The Judge found that the Gotherington Inspector had not erred in law in arriving at that conclusion not to take previous oversupply into account in determining that appeal.
- 7.18 Appeal decisions are not binding precedents however. That the Council includes advanced delivery (or 'oversupply') against annual housing requirements in its five-year supply calculations is, in officers view, in the context of the plan-led system, is the correct approach. This is because not taking into account those houses that have already been delivered during the plan period, essentially ahead of schedule, and which meet the needs being planned for in the area would serve to artificially increase the plan-led housing requirement.
- 7.19 It is noteworthy that, in his judgment, the Judge made it clear that it was not for him to make policy, *"The question of whether or not to take into account past oversupply in the circumstances of the present case is... a question of planning judgment which is not addressed by the Framework or the PPG and for which therefore there is no policy". He went on- 'No doubt in at least most cases the question of oversupply will need to be considered in assessing housing needs and requirements'.*
- 7.20 More recently the Council has received two appeal decisions following public inquiries where the issue of 'oversupply' was also debated. In an appeal at Coombe Hill, the Inspector noted that taking into account *'past performance exceeding the annual average of the plan's requirement... seems to me to be a just approach, because it reflects reality, not a theoretical formula applied without consideration of actual outturns.'*

- 7.21 In another appeal decision for a scheme at Alderton, the Inspector arrived at a similar conclusion, saying that *'Nonetheless, in my judgement, the Council's method of taking account of an over-supply against the annual requirement is not be [sic] an unreasonable one.... To continue to require 495 homes a year when the past over-supply would indicate a lesser requirement, would, it seems to me, be to 'artificially inflate' the housing requirement. I am not convinced, having accepted this position, that the appellant's argument that the supply is as low as 2.08 years is robust.'*
- 7.22 Officer's advice is therefore that a 4.35-year supply can be demonstrated at this time. Nevertheless, as set out above, as the Council cannot demonstrate a five-year supply of deliverable housing sites and the presumption in favour of sustainable development is therefore engaged in this case.

### **Land use impact**

- 7.23 The guidance sets out that housing led development is an accepted land use for the Permission in Principle application process. The application is for up to 1 no. dwelling.

Following consultation with the Environmental Health consultant, no objections are raised in respect of noise and nuisance. The County Archaeologist also advises that there are no archaeological constraints that would prevent development on the site.

### **Amount**

- 7.24 The application proposes up to 1 no. dwelling to be accommodated on site. Whilst it is acknowledged that this application is for the principle of development only, it is considered that the application demonstrates that a dwelling could be accommodated to a satisfactory level of design quality. Any future application will of course be required to comply with the National Design Guide and deliver buildings of a high standard of design.

### **Other Matters**

- 7.25 It should be made clear that it is not within the scope of this application to determine the details of access to the site. In respect of the impact on the residential amenity of existing and future occupiers, both of adjacent sites and of the proposed development, this remains a matter for consideration at the technical matters stage and any issues which may arise must be overcome through that part of the process and are not within the scope of this Permission in Principle application. This would be given full consideration at the technical approval stage. Planning in principle could only be refused on this basis if there were insurmountable reasons why the development as proposed would have unacceptable impacts on the operation of the highway network. In this case the Local Highways Authority has no objection to the proposal.

## **8.0 CONCLUSION AND RECOMMENDATION**

- 8.1 The proposal would be considered infill development within the existing built up area of Shurdington and therefore acceptable in principle. The presumption in favour of development at paragraph 11 of the NPPF states that where policies are out of date planning permission should be granted unless the adverse impacts of doing so would significantly outweigh the benefits, when assessed against the policies in this framework taken as a whole.



**8.2** It is not considered that at this stage there are any identifiable adverse impacts that would outweigh the benefit of the provision of one new dwelling at the site. In the absence of and clear reasons for refusal arising from the matters contained in footnote 8 of the NPPF, the tilted balance is engaged in this case. In light of the above, it is not considered that any harms arise which would significantly and demonstrably outweigh the, albeit limited, benefits of the proposal in this case subject to securing appropriate details at the technical details consent stage. It is therefore recommended that permission in principle is **Granted**.

**INFORMATIVE:**

In accordance with the requirements of the NPPF the Local Planning Authority has sought to determine the application in a positive and proactive manner by offering pre-application advice, publishing guidance to assist the applicant, and publishing the to the Council's website relevant information received during the consideration of the application thus enabling the applicant to be kept informed as to how the case was proceeding.