

<b>MEETING:</b>	<b>PLANNING AND REGULATORY COMMITTEE</b>
<b>DATE:</b>	<b>23 January 2019</b>
<b>TITLE OF REPORT:</b>	<b>180403 - RETENTION OF RESIDENTIAL USE OF FORMER CONVERTED CARPORT FOR ANCILLARY ACCOMMODATION AND RETENTION OF THE NON-MATERIAL CONVERSION WORKS REQUIRED TO BE REVERSED BY ENFORCEMENT NOTICE EN2017/002562/ZZ AT 21 THE MALTINGS, DORMINGTON, HEREFORD, HR1 4FA</b>  <b>For: Mr Wilson per Mr J. S Brearley, 42 Rectory Avenue, High Wycombe, Bucks, HP13 6HW</b>
<b>WEBSITE LINK:</b>	<a href="https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=180403&amp;search=180403">https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=180403&amp;search=180403</a>
<b>Reason Application submitted to Committee – re-direction</b>	

**Date Received: 1 February 2018**

**Ward: Backbury**

**Grid Ref: 358346,240256**

**Expiry Date: 21 May 2018**

Local Member: Councillor J Hardwick

### **Introduction**

This application was previously reported to committee on 25 July 2018 where it was resolved to 'decline to determine' the application under section 70c of the Town and Country Planning ACT 1990. Following this resolution the applicant's solicitor provided precedents in the form of High Court decisions relating to this type of resolution. In addition it was noted that the power to decline to determine an application under section 70c did not form part of the powers granted to the Planning Committee in the constitution. Therefore the application is presented back to committee for determination. The constitution has now been amended.

S70(c) of the Town and Country Planning Act 1990 (inserted (6.4.2012) by Localism Act 2011 (c. 20)) allows a Local Planning Authority to decline to determine a planning application where the development relates wholly or in part to development that is subject of an enforcement notice. In this instance officers did not recommend that option in the report as there appeared to be an acceptable resolution.

The relevant sections states:-

#### **70C Power to decline to determine retrospective application**

- (1) A local planning authority in England may decline to determine an application for planning permission for the development of any land if granting planning permission for the development would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the

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Further information on the subject of this report is available from Mr Steve Davies on 01432 260119

whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control.

- (2) For the purposes of the operation of this section in relation to any particular application for planning permission, a “pre-existing enforcement notice” is an enforcement notice issued before the application was received by the local planning authority.

In this instance an Enforcement Notice was served for the following reasons:

- ‘It appears to the Council that the above breach of planning control has occurred within the last four years.
- The works undertaken to create a self-contained dwelling are in breach of Conditions 8 and 10 of the Planning Permission ref: SH951128PF dated 15 Dec1995.
- An application for Planning Permission for the unauthorised development would not receive officer report having regard to Policies MT1 and LD 1 of the Herefordshire Local Plan Core Strategy 2011-2031
- The Council do not consider that Planning Permission should be given because planning conditions do not overcome these objections to the development.’

and required the following;

- ‘Return the outbuilding, the position of which is marked X on the attached plan, to its former use as garages by the removal of the kitchen and bathroom fittings, staircase, first floor, dormer window and all other items installed to convert the building’.

The time allowed for compliance was 90 days.

It is understood that in attempting to resolve the matter without recourse to the appeal process and for other personal reasons the applicant missed the opportunity to appeal within the set time limit of 35 days.

The applicant’s agent has submitted case law which he considers sets out the purpose of the section, essentially to prevent delay through continual consideration of matters already considered. In this instance the alternative parking arrangements had not previously been considered as details were not available to officers at the time the enforcement notice was issued. Following the application the Council’s Transportation Manager was consulted and he advised that the proposed alternative parking arrangements were adequate and would therefore satisfy Policy MT1 of the Herefordshire Local Plan Core Strategy

Members may of course reach a different conclusion on the merits of the application however it is considered that it is reasonable for the agent to request that the application be determined on the basis of this advice.

The application is therefore re-presented for further consideration. The previous report follows and has been updated accordingly.

## 1. Site Description and Proposal

- 1.1 The development comprises the conversion of an outbuilding formerly used as garages and storage to self-contained residential accommodation which is to be used as ancillary accommodation to the main house. The accommodation comprises: kitchen, living room, store with shower on the ground floor and a bedroom with en-suite shower on the first floor. A dormer window has been installed to light the first floor room.
- 1.2 The development was carried out without planning permission and the applicant now seeks permission for residential accommodation where he intends to accommodate a house-keeper. Permitted development rights were removed when planning permission was granted for the original development.
- 1.3 The development constitutes a conversion of part of the former outbuildings to the adjacent Dormington Court, a grade II Listed Building. The outbuildings were originally converted to form garaging and storage areas for the three houses known as 21 to 23 The Maltings and were constructed to form a small courtyard development. These outbuildings are not listed.
- 1.4 The access to the property is shared with Nos 22 and 23 The Maltings.
- 1.5 21 The Maltings was constructed with four-bedroom accommodation but has since been reduced to three bedrooms by knocking two bedrooms into one. The dwelling also incorporates an adjoining single-storey ground-floor area, formerly a store, converted to form part of the accommodation and currently used as a home-office where it is understood the applicant operates an accountancy business.

## 2. Policies

### 2.1 Herefordshire Local Plan – Core Strategy

The following policies are considered to be relevant to this application:

Policy SS1	-	Presumption in Favour of Sustainable Development
Policy SD1	-	Sustainable Design and Energy Efficiency
Policy RA2	-	Housing in Settlements outside Hereford and the Market Towns
Policy LD4	-	Historic Environment and Heritage Assets
Policy MT1	-	Traffic Management, Highway Safety and Promoting Active Travel
Policy LD1	-	Landscape and Townscape

### 2.2 NPPF

### 2.3 Neighbourhood Plan

The Dormington and Mordiford Group NDP is in the drafting stage and therefore whilst a material consideration has no weight with the decision making process.

### 2.4 The Core Strategy policies together with any relevant supplementary planning documentation can be viewed on the Council's website by using the following link:-

[https://www.herefordshire.gov.uk/info/200185/local\\_plan/137/adopted\\_core\\_strategy](https://www.herefordshire.gov.uk/info/200185/local_plan/137/adopted_core_strategy)

### 3. Planning History

- 3.1 **SH951128PF:** Demolition of outbuildings and construction of three 2-storey houses including part-conversion of existing buildings. Approved.
- 3.2 **Enforcement Notice 2017:** This seeks to restore the use of the outbuildings to use as garages. Whilst this application remains to be determined any further action that may be appropriate is held in abeyance.

### 4. Consultation Summary

#### Statutory Consultations

- 4.1 None

#### Internal Council Consultations

- 4.1 Transportation Manager; No objection subject to four parking spaces being provided and maintained with adequate manoeuvring area to allow vehicles to exit the site in a forward direction.
- 4.2 Conservation Manager (Historic Buildings):

Whilst the building in question is situated within 70m of three designated heritage assets, Grade II\* Church of St. Peter, and Grade II Dormington House and Dormington Court, it is considered that the alteration has caused less than substantial harm in heritage policy terms, and that the impact on the setting of the listed buildings has been minimal. On this basis, there would have been no heritage objection to the conversion of the structure; however, clarification may have been sought on the loss of parking/amenity space and how that was to be addressed without the need for new structures or areas of hard standing. Equally, it would have been advised that the use of a dormer window in this context was not in keeping with the form of the garage, and that rooflights would have been a preferable solution to provide the roof space with light and ventilation.

### 5. Representations

- 5.1 Dormington and Mordiford Parish Council: Objects – development of three dwellings was provided with appropriate parking for that number of dwellings. Addition of fourth dwelling leads to lack of parking, congestion, reduced visibility at junction of access with main road and access problems for emergency vehicles.
- 5.2 Nine letters/emails of objection have been received the main points are summarised as follows:
1. Inadequate parking.
  2. Original 4 or 5 spaces were allocated to No 21 - now reduced.
  3. Traffic congestion within the mews with access frequently made difficult for residents.
  4. Shared access to other properties obstructed.
  5. Parking on road verges obstructing visibility at junction onto main road.
  6. Restricted turning space within the site.
  7. Conversion could be used as 2-bedrooms thereby increasing traffic/parking problems.
  8. Access impeded for emergency vehicles.
  9. Traffic hazard for pedestrians crossing main road to bus stop.
  10. Existing business use of No 21 increases traffic problems.

11. Footpath blocked.
12. Cars having to reverse onto main road.
13. Remaining garage should have internal partition and pillar removed to allow for easier access.
14. Parking in front of No 21 will compromise ease of access to No 22's garages.
15. Since the original report, more photographic evidence of congestion and obstruction of the access has been submitted by objectors.

5.3 The applicants' agent has submitted a supporting statement which also comments on the background to the enforcement notice.

Since the original report information gathered from video evidence has been submitted together with the following statement:

'Please find attached the camera log spreadsheet now supplied by Mr Wilson for 19 to 26 August (I ignore the slight spill over into the 27). We had hoped to provide you with a fortnight or more of data but extracting and recording it is very time consuming and Edwin can confirm that what is revealed is representative of the ensuing months to date. He could in time produce further spreadsheets if that was really called for, which I am sure you will agree it is not. The present exercise took in excess of 9 hours, including download & copying time.

Edwin has been scrupulously fair and you will note that the 'all' column refers to visits by the postman. Excluding their total, the respective visit totals for nos 21, 22 & 23 are 30, 36 and 78, making a gross total of 144. Accordingly the share generated by each of the respective properties is 20.8%, 25% and 54.2%. As there has been a claim of highway unsafety pedestrian/dog movements have been included. You can work out the % for vehicle only movements if you wish but a cursory scan indicates that Edwin's share will still be markedly the smallest. Please note that some registration numbers are incomplete, particularly '64' but Edwin can vouch from personal observation that this was always attributable to No 22. There have been some neighbour vehicle ownership changes and apparently this is one of them and relates to a vehicle that no longer visits the premises, with its replacement replicating its former pattern.'

In summary this shows vehicular and pedestrian movement for the week 19 -26 Aug. For this period the total movements for no.21 were 30, for no.22-36 and for no.23 – 78. 16 movements were unattributed and 11 more were the postman visiting all properties and the refuse lorry.

This information is submitted by the agent to counter what he considers to be misleading representations. He also considers that case law on S70(c ) shows that it is not applicable in this instance.

5.4 The consultation responses can be viewed on the Council's website by using the following link:-  
[https://www.herefordshire.gov.uk/info/200142/planning\\_services/planning\\_application\\_search/details?id=180403&search=180403](https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=180403&search=180403)

Internet access is available at the Council's Customer Service Centres:-

<https://www.herefordshire.gov.uk/government-citizens-and-rights/customer-services-enquiries/contact-details?q=customer&type=suggestedpage>

## 6. Officer's Appraisal

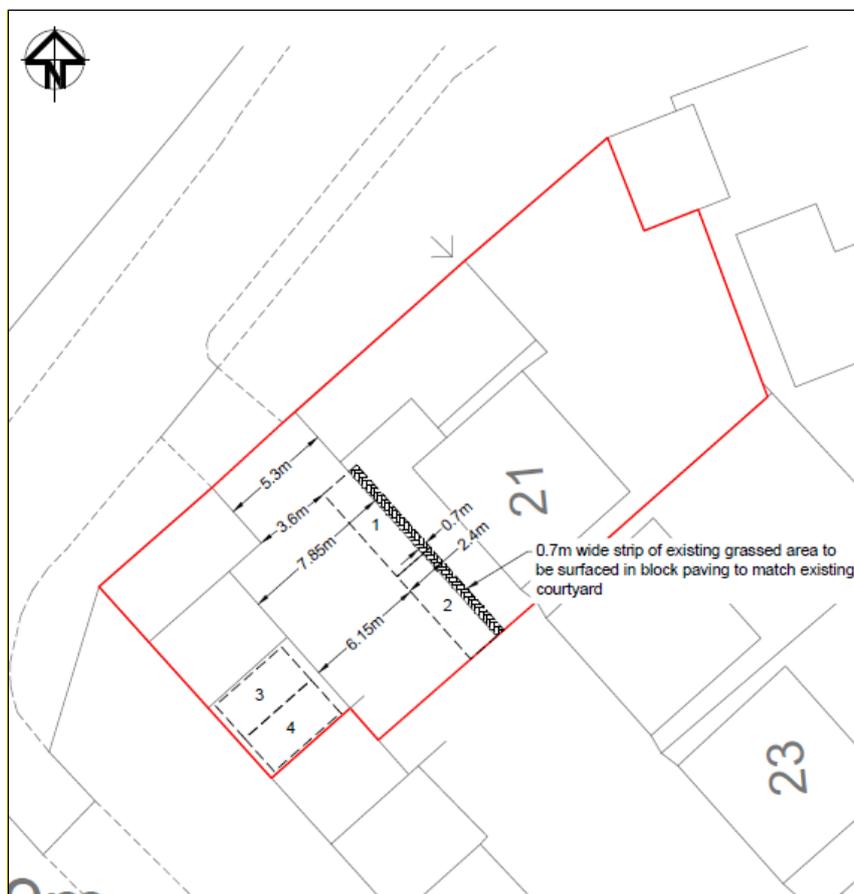
Policy context and Principle of Development

6.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states as follows:

*“If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”*

- 6.2 The application is assessed against the relevant policies of the Herefordshire Local Plan – Core Strategy and the National Policy Planning Framework. The Dormington and Mordiford Group Neighbourhood Development Plan is only at the drafting stage with no submission to the council as yet and therefore whilst a material consideration has no weight within the decision making process.
- 6.3 Policy RA2 supports sustainable housing in identified settlements which includes Dormington, though this application seeks retention of ancillary accommodation not a separate dwelling in its own right, in this instance to provide accommodation for a housekeeper. Having regard to the lack of amenity space, the restricted parking, the nature and character of the housing in the immediate area and the density that would result it is not considered an appropriate location for a new separate dwelling.
- 6.4 Policy SD1 seeks to safeguard residential amenity for existing and proposed residents. This includes, but is not restricted to the convenience and availability of vehicular access and parking.
- 6.5 The home office use in a part of the main house relates to a sole operator accountancy business with occasional client visits. Such a use is not considered to constitute a material change of use of the dwelling. This of course would be subject to change should the intensity of the use increase.
- 6.6 The main issue in this case centres on the access/parking situation and this is the main subject of the objections.
- 6.7 Photographic and video evidence has been provided which supports the claims that the combined use of No 21 as a dwelling / home office and subject development, leads to congestion of the courtyard area around No 21 leading to obstruction of the access to the other two properties, a safety hazard to pedestrians using the access and safety issues at the junction of the access with the adjacent main road. There is evidence that this congestion makes it difficult for vehicles to turn within the available space and are therefore sometimes reversing onto the highway.
- 6.8 A few minutes spent observing this junction reveals that the road is busy, carrying a substantial amount of traffic travelling to and from Mordiford, and that speeds are high. There is also a bus-stop opposite the junction and pedestrians cross the road here to reach it.
- 6.9 There is a concave bend in the road at this point and verges are provided which allow visibility in both directions. There is evidence that vehicles sometimes park on these verges when the courtyard is congested, leading to restricted visibility at the junction. However examination of the grass on these verges reveals little wear leading to the conclusion that this is not a common occurrence.
- 6.10 Having reviewed the evidence I take the view that the current parking arrangements within the courtyard in front of No 21 can be inadequate and create congestion and potentially compromise highway safety. The data provided more recently by the applicant refers to numbers of movements. The actual video has not been submitted to assess whether this has caused congestion.
- 6.11 The main issue with this application, therefore, is whether sufficient provision of parking and turning space can be provided and its proper future use adequately ensured.

- 6.12 The original development provided four garage/carport spaces for No 21. Two of these spaces have been incorporated into the recent development and the other two are currently used for storage. There is no formal or safe street-parking adjacent to the property. All of the parking and manoeuvring of traffic associated with no 21 is therefore likely take place either within the courtyard or informally on the adjacent road or its verges where it potentially causes a traffic hazard.
- 6.13 No 21 was constructed as a four-bedroom house and subsequently converted to three bedrooms. It could be easily converted back to four bedrooms. The proposed ancillary one-bed accommodation produces a further parking requirement, but could also be used as 2-bedroom accommodation. Indeed, the applicant gained Building Regulations approval for the development and the Building Regulations plans annotated the room which is now described as a 'Store Room with Shower Room' as 'Bedroom 1'. There is therefore the potential for six bedrooms to be used within the overall accommodation and there is potentially also occasional requirement from clients in relation to the home-office use.
- 6.14 Extensive consultation has taken place with the Council's Transportation Manager and the objections and evidence supplied have been carefully considered. The Transportation Manager has advised that if four spaces which comply with the standard guidelines (Highways Design for New Developments) can be provided within the property, allowing adequate turning space within the courtyard and boundaries of the property, the development will be acceptable in relation to parking and access.
- 6.15 The parking scheme proposed by the applicant shows two new parking spaces within the courtyard and two spaces within the garages all of which conform to the guidelines. The scheme is regarded as acceptable by the Council's Transportation Manager. Acceptable manoeuvring space is also provided.



Further information on the subject of this report is available from Mr Steve Davies on 01432 260119

- 6.16 A site inspection was undertaken on 7 November. At that time there was a car parked in parking space no1, of the above diagram. This did not make it difficult to enter the site. There was also a skip outside no.22 which again did not impede movement unreasonably.
- 6.17 A condition can be imposed requiring the two remaining garages, which are currently used for storage, to be kept available for parking together with the provision of two marked spaces created by modifying the landscaped area in front of the No 21. and surfaced and finished in accordance with a scheme to be submitted and approved by the Council.
- 6.18 The Council's Conservation Manager was also consulted and the advice was that the development caused less than substantial harm and the impact on the setting of the adjacent listed building was minimal. Taking this into account, it is considered that the development is not significantly contrary to policy LD4 which requires that development proposals should demonstrate that the character of the area has positively influenced the design, with particular reference to the adjacent listed building in this case.

### **Conclusion**

- 6.19 It is considered that it is appropriate to determine the application on its merits rather than decline to determine under S70 (c) as set out above. As the objections on parking and highway safety grounds can be overcome to the extent that there is no significant harm to either these interests nor to residential amenity it is recommended that planning permission be granted, subject to the following conditions.

### **RECOMMENDATION**

**That planning permission be granted subject to the following conditions and any further conditions considered necessary by officers named in the scheme of delegation to officers.**

- 1. The development hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 21 The Maltings, Dormington, Herefordshire. HR1 4FA.**

**Reason: It would be contrary to Policies RA2 and SD1 of the Herefordshire Local Plan – Core Strategy to grant planning permission for a separate dwelling in this location.**

- 2. Within one month of the date of this decision the existing double garage shown on Drwg no. 1126/004 rev D shall be made available for use for the garaging of private motor vehicles and the garages shall at no time be converted or used for any other purpose.**

**Reason: To ensure adequate off street parking arrangements remain available at all times and to comply with Policy MT1 of the Herefordshire Local Plan – Core Strategy.**

- 3. Within 3 months of the date of this permission details of the parking spaces shown on drawing number 1126/004 rev D dated 19th June 2018 shall be submitted to the local planning authority for their approval.**

**Reason: In the interests of highway safety and to ensure the free flow of traffic using the adjoining highway and to conform with the requirements of Policy MT1 of Herefordshire Local Plan – Core Strategy.**

4. Within six months of the date of this permission parking spaces shall be laid out and properly consolidated, surfaced and drained, and thereafter maintained, in accordance with the details approved by the local planning authority and that area shall not thereafter be used for any other purpose than the parking of vehicles and the remaining courtyard within the boundaries of the property shall be kept clear at all times.

Reason: In the interests of highway safety and to ensure the free flow of traffic using the adjoining highway and to conform with the requirements of Policy MT1 of Herefordshire Local Plan – Core Strategy.

5. The ancillary accommodation and the dwelling known as 21 The Maltings, Dormington, Herefordshire HR1 4FA shall not be sold, leased or let separately from each other.

Reason: It would be contrary to the policy of the local planning authority to grant permission for a separate dwelling in this location having regard to Policies RA2 and SD1 of Herefordshire Local Plan-Core Strategy which seeks to safeguard residential amenity for existing and proposed residents.

6. Notwithstanding the provisions of article 3(1) and Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015,(or any order revoking or re-enacting that Order with or without modification), no development which would otherwise be permitted under Classes A, B, C, D, E and H of Part 1 and of Schedule 2, shall be carried out.

Reason: In order to protect the character and amenity of the locality, to maintain the amenities of adjoining property and to comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy.

**INFORMATIVES:**

1. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations. Negotiations in respect of matters of concern with the application (as originally submitted) have resulted in amendments to the proposal. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

Decision: .....

Notes: .....

**Background Papers**

Internal departmental consultation replies.



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**APPLICATION NO:** 180403

**SITE ADDRESS :** 21 THE MALTINGS, DORMINGTON, HEREFORD, HEREFORDSHIRE, HR1 4FA

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