

Combroke Parish Council

Consultation for Planning Application 17/01463/FUL

Proposal: Use of outbuilding as ancillary residential accommodation. Installation of 2 air source heat pumps and works to level ground. (Retrospective).
at: 14 Combrook CV35 9HP.

The Parish Council discussed this application at a meeting on 17 July 2017.

At the meeting a factual presentation of the scheme was given, after which residents present were invited to ask questions for clarification and make any relevant planning comments about the proposed scheme.

A total of 21 residents representing 19 households, one third of the village, have attended either the Parish Council meeting itself or separately arranged opportunities to view the Parish Council's display of the proposal and plans.

Representation

For the sake of clarity: this building has not been constructed in accordance with the approved drawings for 15/00443/FUL. It is in breach of planning conditions 2, 4 and 5 that were attached to that permission, which was approved as a replacement for a C19/early C20 timber barn and the specified use was as a garage, workshop/store.

This application is presented in part as a conversion to ancillary residential accommodation. However, the 'as built' drawings accompanying this application are completely different from the approved drawings. There are exterior differences as well as significant interior layout changes all of which have been implemented deliberately to enable use as a separate dwelling unit.

It is in fact a two storey detached house built within the curtilage of a listed building, at the heart of a Conservation Area, in a rural village where new dwellings are defined in Planning Policy as not sustainable. It directly contravenes condition 5 of 15/00443/FUL which explicitly excluded '*occupation or use at any time as a separate dwelling unit*'.

The building is therefore currently in breach of the existing planning permission and in reaching a view about all parts of this application the Parish Council has considered whether the proposals and plans would have merited approval if they had been presented before any construction took place.

The Parish Council is objecting to this retrospective application on the following grounds:

- The building has been constructed from the outset as a separate dwelling unit. It is detached from the original cottage and contains completely self-contained accommodation comprising living, cooking, sleeping and bathing facilities over 2 floors. This is contrary to the Core Strategy Policy for the distribution of development (CS15) because Combrook is not a sustainable location.
- The Local Authority's policies and guidance '*generally support semi-independent accommodation for family members or other people living as part of the main household.*' However such accommodation '*should not be self contained; and should*

be designed to be an integral part of the main house.'
(refer SDC 'Extending Your Home')

- The application is incomplete. It lacks a design and access statement and a heritage statement that is in any way relevant to the 'outbuilding'. No technical evidence is provided regarding the proposed air source heat pumps.
- Resembling a 'holiday log cabin', this development does not improve the quality of the public realm. It does not enhance the sense of place nor reflect the character and distinctiveness of the locality (refer CS 9)
- The building is intrusive within the setting of the Listed Building and Conservation Area (refer CS 8)
- The development is detrimental to the amenity of adjacent neighbours with regard to:
 - ♦ the overall massing and overlooking from first floor windows of the outbuilding;
 - ♦ the 2m+ high landscaping across the middle garden overlooks and dominates the adjacent garden to the north;
 - ♦ the building's air source heat pump (ASHP) which faces towards the neighbouring property has been heard in operation at night - a more neighbourly location might be to the rear of the building¹.
(CS 9 B 8 & CS 20 E1 5.6.3)
- There are concerns that the two ASHPs will introduce a noise level that will be incompatible with the ambient noise levels and amenity currently enjoyed by neighbouring residents. The Parish Council would need to be assured through compelling evidence that these concerns can be addressed. The detail provided in the application fails to do that.
- The levelling of land is intrusive within the setting of the curtilage of a listed building and has not adequately taken into account the fact that the land is in an area at risk from surface water flooding. The landscaping changes pose additional risk to flooding elsewhere. There are no measures described to minimise the increased risk.

In Detail

1. Context

- 1.1. No 14 occupies a central plot within the village. Nos 12 and 14 together (previously known as 12, 13 and 14) are a single C17 building which is Grade II Listed and described as a 'good example of a C17 local type of cottage' in the SDC Combrook and Compton Verney Conservation Area Study (1994). The study states that this 'area of the main street around and south of the Church forms the most significant part of the village scene.'
- 1.2. The applicant's heritage statement submitted for 14/02268/FUL identifies
 - ♦ *No 14 ... as prominent within the centre of the Conservation Area and having high significance overall;*

¹ ASHP must be sited, so far as is practicable, to minimise its affect on the external appearance of the building and its effect on the amenity of the area - Planning Portal (ASHPs as permitted development)

- ◆ *its setting can be defined as the Village Street, the lower part of Church Hill and the land running down to the brook;*
- ◆ *the cottage and its curtilage:*
- ◆ *are a significant view within the Conservation Area*

1.3. Within the curtilage of a listed building the construction of *any outbuilding* requires planning permission.

2. The Constructed Building

2.1. The Parish Council's view is that the 'as built' plans submitted with this application represent a *wilful breach of planning regulation²* on this site.

2.2. The setting is the curtilage of a listed building and all new outbuildings in the curtilage of a listed building require planning consent. The only planning consent for the curtilage of No 14 is 15/00443/FUL together with the amendment 15/03913/AMD. The amendment gave approval for 2 additional windows in the garage. It did not make the plans accompanying the application the approved drawings. The only approved drawings for this are in 15/00443/FUL.

2.3. The building constructed in the curtilage at No 14 is not in accordance with the approved permission 15/00443/FUL.

2.4. To be clear: 15/00443/FUL has **never** been implemented. Permission was granted for a replacement outbuilding subject to conditions. The building to be replaced was a timber barn (C19 / early C20) previously in use as a garage/workshop. The approved permission was for a garage/workshop and the conditions on the consent included

- *The development shall be carried out **only in accordance with the approved drawings***
Reason: to ensure only the approved development is carried out in order to protect the amenity of the area
- *The development shall not be occupied or used at any time as a separate dwelling unit.*
Reason: to comply with the policies of the L P

2.6. The supporting letter for this application asserts that, '*internal alterations have been made / have already taken place*' implying perhaps that the approved building has been built and then altered to form living accommodation.

2.7. This is not the case.

2.8. The building has been built from the outset to the plans which have only now been submitted retrospectively. It was not built according to the approved plans. Furthermore a pretence has been perpetuated since construction, which started around August 2015, that the building was in compliance with 15/00443/FUL -5 further planning applications have been made which have falsely shown the living room as a garage including the depiction of a car in the garage. The deceit has been promoted by the addition of fake garage doors that are nothing more than a façade.

² descriptive text as used in Paragraph: 011 Reference ID: 17b-011-20140306 DCLG Guidance Ensuring Effective Enforcement

- 2.9. None of the differences between the approved plans and the 'as built' plans are alterations - they have all been present from the outset.

The external differences

- 2.10. The design statement and plans for 15/00443/FUL provide photos and a plan of the original barn and describe the proposal to replace the old barn with a new structure similar in shape; a '*little larger*' than the existing; and relocated several metres to the north of its original site. The elevations are shown finished to match the original barn with vertical timber cladding on the northeast and southwest elevations; horizontal boarding at the gable ends ; and the garage doors vertically boarded in the traditional style.
- 2.11. The building constructed is no longer similar in shape nor size - the floor level is lowered 330mm, thus increasing the height to the eaves so that the building is now out of proportion to the approved plans. Measurements taken from the now submitted 'as built plans', suggest the overall dimensions have been made a '*little larger*' -*again!* As much as 500mm longer, 200mm wider and overall height to ridge from the ground level is 500mm higher at its shortest point.
- 2.12. The Local Authority's guidance 'Amending Your Plans' identifies that increases of 300mm and above are material differences which require a full planning application for approval rather than a planning amendment application. These changes to the outbuilding have had neither. Taken together these noticeably increase the massing of this building from that approved under 15/00443/FUL. The massing of this building is now well above that of the original barn it replaces, more intrusive in the street scene and more detrimental to the amenity of neighbouring properties. These differences in size enable the use of the first floor as accommodation.
- 2.13. Similarly intrusive are the changes in the treatment of the elevations. Horizontal cladding on the long southwest and northeast elevations does not reflect the character of the setting. The 15/00443/FUL plans show these elevations with vertical boarding replicating the old barn.
- 2.14. Finally, there are the windows in the garage doors which directly face the village street and are a completely inappropriate choice for this location. There was a clear requirement here for traditional vertically boarded doors as in the approved plans -replicating the style of the old barn. The Conservation Officer's report distinctly states that the garage doors should be timber boarded.
- 2.15. The only reason for adding these windows is to increase daylight into a space that was approved as a garage but which has been constructed as a living room. There is only one other small window in this room and it is unclear how Building Regulation requirements for ventilation can be met as the garage door windows are fixed.
- 2.16. It is perfectly obvious that for habitable use an alternative window arrangement with opening lights would be needed in the elevation facing the road. But this would reveal the true nature of the building as a separate dwelling. Instead the applicant has perpetuated the deceit by presenting the false façade in order to attempt to manipulate the planning system.

2.17. The building is regarded by many in the village as resembling a holiday log cabin which is simply out of place at the centre of the village. It is an insult to the character of both the Conservation Area, this setting within the curtilage of a listed building and the wider setting of the grouping of adjacent listed properties -an area of 'special character' within the Conservation Area as a whole.

The internal differences

- 2.18. The approved plans for 15/00443/FUL show the replacement outbuilding as a single storey unit with a garage to the front and a separate workshop located to the rear of the unit. The loft area above the workshop is identified for use as storage and is shown as being accessible only by a ladder. The shallow roof space above the garage is identified as storage.
- 2.19. The submitted 'as built' plans show significant internal differences: at the front, a living room with access off leading to a fully equipped bathroom, and door through to a stairway landing, leading down to the rear kitchen and upwards to a first floor bedroom with an access door through to what is described as a storage loft. This loft has an increased maximum headroom (now just over 2m on plan), making it a useable 2nd bedroom with an interconnecting door from bedroom1. This would be suitable for family use as a sleeping area. In fact bedroom 1 is large enough to allow a further partition to provide separate access. In other words the building that has been constructed is a spacious two bedroom independent living accommodation.
- 2.20. One crucial issue is the overlooking towards the neighbouring property from first floor windows which are now serving habitable spaces. Side facing first floor windows are *required to be obscure glazed* to protect the amenity of adjacent neighbours when a conversion of an existing garage building to a habitable space is undertaken under permitted development. Although of course, permitted development does not apply in this curtilage and the garage was never built, but the principle is crucial when considering this retrospective application presented by the applicant as an '*alteration*' to the approved garage.

Proposed use of outbuilding as ancillary accommodation

- 2.21. During the consultation for 15/00443/FUL the Parish Council was content with the concept of a garage/workshop outbuilding as a replacement for the old barn, including its relocation. However the Parish Council did raise concern about the purpose of the number of windows/rooflights shown in what was clearly a loft area -the Council also raised the potential for unwelcome light emission from these in a dark night time environment.
- 2.22. The response was the applicant ***intended to use*** the workshop and loft storage for their hobby: collecting/repairing old ship lights and was wanting natural daylight into the space. It was suggested the Parish Council was being overly picky about the matter.
- 2.23. Clearly, **no material weight** can be attached to the statement in the Agent's letter that '*the applicant does not intend to use the outbuilding as separate self-contained unit of accommodation*'

- 2.24. From the 'as built' drawings, this building contains a living room, a kitchen, a shower room with toilet, and a 'sleeping loft.' It even has its own separate heating system and so the building is undeniably a self-contained unit of accommodation.
- 2.25. Condition 5 attached to 15/00443 stated '*The development hereby permitted shall not be occupied or used at any time as a separate dwelling unit*'
- 2.26. The applicant has previously submitted an application, for temporary use as a separate dwelling for a period of 12 months. No changes to the building were proposed to achieve this, which confirms its construction as a separate dwelling.
- 2.27. The applicant has already submitted an application, subsequently withdrawn, for a new access on the north side of the site.
- 2.28. The Parish Council is of the view that the Agent's assertion that this current proposal does not require planning permission is inaccurate. This building, which is a self contained unit of accommodation, requires a full planning application with a design and access statement and a heritage statement.
- 2.29. This building does not have a planning consent.
- 2.30. In the determination of a retrospective application for a building which has been erected without consent the key question must be:
- *would these plans and proposed use be approved had they been presented prior to the planning breach?*
- 2.31. It is the view of the Parish Council that in answering this question, the following statements of fact are key.
- *'a purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen'*³;
 - *the Planning Authority's policy guidance states that ancillary accommodation should be attached to the main house;*
 - *the floor area of this 'ancillary accommodation' is 80% of the total floor area of the original cottage⁴ -as it was in 2014 and including its attic space;*
 - *a separate self contained unit of accommodation is not sustainable development at this location as defined in the Planning Authority's Core Strategy (CS 15);*
 - *the external cladding does not reflect the design of the original outbuilding and does not preserve and enhance the character of the locality. It has been referred to by residents as resembling a 'holiday log cabin';*

³ DCLG technical guidance outbuildings and permitted development

⁴ ie the 17C building plus side extension and rear extension

- *elements of the design of the building are detrimental to the character of the setting of the Listed Building and Conservation Area ;and*
- *it compromises the amenity of adjacent neighbours -with regard to its overall massing and first floor windows.*

3. Landscaping Works to Level Ground (Retrospective)

Changes to topography

- 3.1. Prior to the current development the land sloped down to the stream at the bottom following the natural contours of the valley in which Combrook is situated.
- 3.2. It contributed to the setting of the Conservation Area (refer 1.2).
- 3.3. The applicant has undertaken significant engineering operations to level part of this land using gabions to hold back *'surplus demolition material and site spoil'* No cross sections are shown but from the Proposed Landscaping Plan (358-39E) the spot height at the base of the gabions is 94.71m while the height of the land immediately above the levelled area is shown as 97.13m, a height difference of 2.42m.
- 3.4. The lack of a cross section across the plot means that the Proposed Landscaping Plan fails to show that there previously existed a deep, wide open ditch that ran along the North East boundary for a distance of approximately 30m in the position shown on the plan by the solid blue line as *'Existing culvert extended to wetland area with 3 new 100mm diameter pipes'*. This ditch was in fact a watercourse that connected the existing storm drain culvert (shown light blue on the plan) to the stream below via the wetland area.
- 3.5. The following issues arise from topography changes.

Creation of a raised platform

- 3.6. The height increase of 2.42m is very considerably greater than the 300mm allowed for a raised platform if permitted development rules were applicable. Neighbours to the northeast feel the gabion platforms abutting their boundary overlook and dominate their own garden amenity.

Flooding and land stability implications

- 3.7. Environment Agency surface water flooding mapping shows the whole of this side garden area at risk of surface water flooding and the path of the ditch is shown as a high risk area. This is thought to be why no permanent building has ever been erected in the gap between No.14 and Wheelwright Cottage.
Source: flood-warning-information.service.gov.uk/long-term-flood-risk copy Appendix A
- 3.8. The ditch that has been filled in was part of a watercourse down to the stream. Since the roadway was engineered this ditch has carried surface water collected by the road gully near the property boundary with Wheelwright Cottage. This road gully collects all the water from Church Hill which in turn collects run off from the hillside above. The top part of the watercourse is culverted in a 9 inch (225mm) solid pipe for a distance of

approximately 14m and this has been the case since at least the middle of the last century.

- 3.9. On many occasions in the past, most recently March 2016, the volume of surface water running down Church Hill overwhelms the road gullies causing the excess to flow over the pavement and into the garden land adjacent to the NE boundary



- 3.10. On these occasions the flood water has flowed down the open ditch and the permeable nature of the ditch has enabled it to reduce the flow rate and allow gradual entry into the stream without scouring. No permanent damage was done to the garden land which quickly recovered.
- 3.11. As part of the work to produce the levelled area, the wide open ditch has been filled in over a length of approximately 30m and 3 no. 100mm pipes have been substituted to carry the surface water which previously flowed down the ditch. Since this work was a change to a watercourse, approval for this work should have been sought from Warwickshire Council Council as the Lead Local Flood Authority (LLFA) but it was not. In addition, the plans show that all surface water from roofs and hard landscaping drainage channels are to be connected to the new culvert. This will inevitably add even more to the volume of water to be handled and the rate at which storm water enters the new culvert.
- 3.12. Officers from the LLFA visited the site in March 2017 and have confirmed that works to the watercourse have been carried out without consent and are in contravention of the Land Drainage Act 1991 (S23). The LLFA is unable to grant retrospective consent and it remains that enforcement action will be taken if maintenance of the drainage works is not undertaken at any time in the future. Also the implementation of an overflow channel was required above the line of the watercourse.
- 3.13. The Parish Council requests that the Planning Authority consult with the LLFA to determine whether consent is required for the proposed discharge of site surface water to the watercourse as indicated in these submitted plans.
- 3.14. The Parish Council has major concerns over 2 aspects of the landscaping /drainage work that has been carried out.

Concern over increased downstream flood risk.

3.15. Previously the 30m long open ditch would have allowed dispersal of flood water into the surrounding soil and vegetation. It would have the effect of delaying the water which unavoidably floods down Church Hill from reaching the stream. The flow rate of the water carried by the rigid pipes would not be similarly attenuated and would therefore enter the stream much sooner posing an increased risk of flash flooding from the stream level rising. This is a well documented occurrence.

Concern over the stability of the built up land.

3.16. The capacity of the 3 small 100mm pipes is very considerably less than the wide open ditch that they replace. Under heavy rain conditions flooding occurs over the garden as shown by the Environment Agency surface water flood map. The built up ground comprising demolition material and site spoil will become saturated under these conditions and this will exert pressure on the gabions. The Proposed Landscaping Plan suggests that the gabions are built 2 cages deep, but they are in fact 2 cages high.



3.17.

There will therefore be a very considerable volume of saturated built up ground behind the gabions and because these are 'garden structures' having no foundations rather than a properly engineered retaining wall with drainage channels, there are concerns about the possibility of landslip. If this were to occur debris would wash into the stream causing a blockage and potential upstream flooding.

3.18. The Parish Council and adjacent neighbours are concerned about the work done to level the ground on the basis that the changes made have not adequately taken into account the fact that the land is in a risk area from surface water flooding. The changes made pose additional risk to flooding elsewhere. There are no measures described to minimise the increased risk.

4. Installation of 2 air source heat pumps (part Retrospective)

Acceptability

4.1. The Parish Council welcomes applications which promote the use of renewable energy provided that they conform to the relevant standards. In this case we would expect the Microgeneration Certification Scheme Planning Standards document MCS 020 Issue 1.2, 2015 to be applicable to both heat pumps.

4.2. Of particular concern is the noise produced by the heat pumps. Combrook has been identified by The Countryside Agency Project 2006 as being at the 'most tranquil' level. (See map, appendix B). The background noise level, particularly at night time, is therefore exceptionally low and much lower than the normally assumed 40 dB(A) figure for calculation purposes in MCS 020.

- 4.3. It is at night when the air temperatures are at their lowest that heat pumps need to operate for long periods, often continuously. The valley setting also means that while external noise is minimised, noise created within the valley tends to be reflected from the valley sides and reverberate. Furthermore, many residents of listed buildings with solid walls have to maintain adequate ventilation at all times and need to sleep with windows partially open.
- 4.4. NPPF 2012 paragraph 123 states that planning policies and decisions should aim to :-
- *mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions*
 - *identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason*
- 4.5. Since Combrook has been shown to be an 'area of tranquillity', it is a planning requirement that noise from both heat pumps be 'reduced to a minimum'. In the absence of any detailed specification for either heat pump, or the installers technical sheets including evidence of calculations performed to demonstrate compliance with MCS 020, the Parish Council seek that a planning condition be applied which ensures that the noise level is reduced to a minimum.

Air source heat pump serving the outbuilding

- 4.6. This 9kW heat pump has been in place for more than 12 months and the building used for accommodation over some periods during this time. Residents have reported hearing it running continuously at night in some cold periods. On one occasion when temperatures were sub-zero, a resident was disturbed inside their house and tracked the source of the noise to this pump. It is believed the unit may have been running a 'defrost cycle' at the time which produces substantially more noise than when in normal operation.
- 4.7. At this time, there was no timber screen in place shielding the heat pump from view from the road. Unfortunately, although this screen improves the visual situation, it adds a reflective surface which will not minimise noise. In the MCS 020 noise assessment procedure it results in a 'directivity' value of 8 which effectively adds 6 dB(A) to the minimum possible noise level. While it may serve to deflect noise away from the road it may inadvertently direct it more towards the nearest neighbour at Wheelwright Cottage where the nearest neighbouring habitable room lies. According to MCS 020 this will be the 'assessment position' for the installer's noise measurement.
- 4.8. In the absence of any evidence that this installation reduces the noise level to a minimum, the Parish Council would expect a condition which requires changes to be made to the installation that achieve a demonstrable minimum (refer 4.4).

Proposed Air source heat pump serving the cottage.

- 4.9. It is understood that this is no longer 'proposed' but has been installed in place recently. Yet another wilful breach of planning regulation⁵ on this site.

⁵ descriptive text as used in Paragraph: 011 Reference ID: 17b-011-20140306 DCLG Guidance Ensuring Effective Enforcement

- 4.10. There are no technical details for this pump other than that it is larger than the first at 16kW. It is claimed that it meets '*permitted development noise levels*' but these levels relate to the installation and not to the sound power level of the heat pump. Since there are no installation calculations it is invalid to make such a claim.
- 4.11. From the photograph in the report accompanying this application showing the area prepared to receive the proposed heat pump, it is noted that it appears to be set in a 'well' comprising many potential reflecting surfaces. Using the methodology in MCS 020 the best possible arrangement in this location will result in a 'directivity' value of 8 which again cannot produce the minimum possible noise level.
- 4.12. The 'assessment position' for this pump will be the window of a habitable room in 12 Combrook which adjoins No. 14. It cannot be predicted what the noise level from this quite large heat pump will be at this position without details of the pump and the installation.
- 4.13. The proposed location and arrangement makes it impossible for this installation to reduce noise level to a minimum. It may be possible to provide sound deadening features or add an acoustic enclosure to make the sound level acceptable. The Parish Council would expect a condition which requires any proposed installation to achieve a demonstrable minimum (refer para 4.4).

5. Conclusion

- 5.1. The Parish Council is opposed to this retrospective application for all the above reasons.

3 August 2017

Appendix A Extract Environment Agency Surface Water Flooding



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extracted from <https://flood-warning-information.service.gov.uk/long-term-flood-risk/mapeasting=430693&northing=251663&address=10023580626&map=RiversOrSea>

Appendix B Tranquillity map from The Countryside Agency Project 2006

